

Take Note: This section of the Draft ITB is, as are the other sections, only a draft of what is expected to be released as a final document. In addition to adding, deleting or modifying the terms and conditions, this section will also be reconfigured so that the applicability of the terms and conditions will be clearly delineated.

SECTION 6 CONTRACT TERMS AND CONDITIONS

6.1 GENERAL CONTRACT PROVISIONS

The following Subsections address the general contract provisions regarding the Oklahoma MMIS.

6.1.1 CONTRACT COMPOSITION

The terms and conditions contained in this Section shall constitute the basis for the contractual agreement resulting from this ITB. This ITB, as well as the selected Proposal, shall become part of any agreement between the parties. OHCA is solely responsible for rendering decisions in matters of interpretation of all terms and conditions.

The component parts of the contract between the State of Oklahoma and the Contractor selected from the evaluation of responses to this ITB shall consist of:

- o the Oklahoma Contract signed by all parties and approved by the Health Care Financing Administration, and any subsequent amendments to that document;
- o the ITB, inclusive of appendices and exhibits;
- o any amendments to the ITB; and
- o the Contractor's proposal and any written clarifications or representations incorporated as part of the procurement process.

The order of precedence among the contract components shall be, first, the Contract for MMIS Contractor Services and any amendments to it; second, the ITB and any amendments to it; third, the Contractor's proposal, including any clarifications requested and incorporated therein by the State of Oklahoma. A higher-order document shall supersede a lower-order document to the extent necessary to resolve any inconsistencies between them, but silence on any matter in a higher-order document shall not negate or modify the provisions of a lower-order document as to that matter.

In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the contract shall govern, and if not set forth in the contract then the ITB shall govern. In the event that an issue is addressed in the Proposal that is not addressed in the ITB, no conflict in language shall be deemed to occur. However, the State reserves the right to clarify any contractual relationship in writing, with the concurrence of the Contractor, and such written clarification shall govern in case of conflict with the applicable requirements stated in the ITB. In all other matters not affected by the written clarifications, if any, the ITB shall govern.

Features of the system, as presented in the Proposal but not required by the ITB, may be used at the option of the State.

The State's execution of this contract does not constitute the exercise of any OHCA approval required by the ITB nor does it constitute OHCA approval of proposed methods for meeting ITB specifications.

6.1.2 NEW SYSTEM REQUIREMENTS ESTABLISHED BY TECHNICAL AND BUSINESS PROPOSAL

If the Contractor has offered, in its Technical and Business Proposal, to meet requirements which exceed (are more stringent than) ITB requirements, the Authority will be considered to have accepted this offer of more stringent requirements by award of the Agreement to the Contractor. The only exception will occur if specific technical proposal requirements are rejected by the Authority. Therefore, unless superseded by the contract language herein and specifically identified as such, the requirements contained in the Contractor's Technical and Business Proposal shall constitute the basis for the measurement of Contractor performance and shall govern the applicability of any other legal remedy available to the Authority. Under no circumstances shall requirements that are less stringent than ITB requirements be accepted or become a part of the Agreement unless so negotiated by the State.

6.1.3 EXECUTION OF CONTRACT

The Agreement shall become effective after review and approval by the Chief Executive Officer of OHCA, the OHCA Board, and all other applicable State review agencies and the U.S. Department of Health and Human Services (DHHS) and after signature by authorized representatives for each party hereto. By their signature, each representative confirms that they have the proper and legal authority to sign and bind their organization and that each party has the legal right and power to perform all acts required by this Agreement.

6.1.4 CONTRACT TERM

The following contract terms and conditions address the contract term.

6.1.4.1 Initial Contract Period

The initial contract period shall go into effect commencing with the date that both parties sign the Agreement. The initial contract period shall begin on that effective date and shall extend through June 30, 2007 unless extended or terminated in accordance with applicable termination provisions. The Contractor shall not commence work, or commit funds, or incur costs, or in any way act to obligate the State of Oklahoma as if he/she were the Contractor until so notified in writing of the approval of the contract. The Director of the Division of Central Purchasing of the Department of Central Services of the State of Oklahoma, or their designated representative is the only individual who can transmit that approval to the Contractor.

6.1.4.2 Extensions

Under Oklahoma State law, OHCA may not contract for a period longer than one (1) year. By mutual agreement of the parties hereto, it is intended that there will be five (5) initial extensions of the Agreement, each for a duration of one (1) year, to support ongoing contractor operations. OHCA may choose to exercise additional three (3) one (1) year contract extensions beyond the end date of June 30, 2007. Any agreement to extend the Contract shall be set forth, in writing, by the parties at least six (6) months prior to the end of each contract period or extension period. The agreement shall be contingent upon approval by OHCA and the U.S. Health Care Financing Administration (HCFA) in order to be effective. If a decision is made not to extend a contract period, notice shall also be sent at least six (6) months prior to the end of the current contract period, and the contractor shall then complete all remaining Turnover Task responsibilities specified in ITB Subsection 3.9.

6.1.5 CONTRACT ADMINISTRATION AND MANAGEMENT

The contract shall be administered for the Oklahoma Health Care Authority (OHCA). The OHCA shall name a Contractor/MMIS Re-procurement Manager to manage the State's responsibilities during the Development and Implementation tasks. This person is identified in ITB Subsection 1.2.6. For Operations, Maintenance, Modifications, and Turnover tasks, OHCA has designated the Deputy Administrator of the Information Services Division as the MMIS Contract Administrator. The MMIS Re-procurement Manager and Contract Administrator shall be responsible for all matters related to this Contract during their respective tasks.

The MMIS Re-procurement Manager will be responsible for coordination and accountability with external State and Federal agencies and for monitoring and approval of contractor activities during the Development and Implementation task. During the Operations, Maintenance, Modifications, and Turnover tasks of the contract the MMIS Contract Administrator will maintain ongoing responsibility for contract monitoring and contractor compliance with the terms and conditions of the contract.

The MMIS Re-procurement Manager or Contract Administrator will issue, from time to time, such written specifications and instructions as may be necessary for the contractor to carry out its scope of work and performance obligations. The MMIS Re-procurement Manager or Contract Administrator will periodically evaluate the contractor's performance under this Agreement. The contractor shall promptly undertake such improvements and corrections as may be reasonably necessary to correct the problems and/or deficiencies identified in the MMIS Re-procurement Manager's and Contract Administrator's periodic evaluations.

The MMIS Re-procurement Manager will appoint an MMIS Project Management Team that will serve as the primary contact point for working with other OHCA staff and for any questions and problems that arise during the Development and Implementation tasks.

The MMIS Contract Administrator shall establish ongoing contract management responsibility for the Operations Phase after the start of operations. Designated staff for the purposes of daily communications and the informal discussion of questions and problems will also be named.

The MMIS Re-procurement Manager and Contract Administrator will have day to day responsibility for the direction of the project and will be the Contractor's primary liaison in working with other OHCA staff. The MMIS Re-procurement Manager and Contract Administrator will initially receive and review all Contractor progress reports and deliverables, oversee scheduling of meetings with State staff, and maintain first-line administrative responsibility for the contract. In no instance shall the Contractor refer any matter to any other OHCA official unless initial contact, both verbal and in writing, regarding the matter has been presented to the MMIS Re-procurement Manager or Contract Administrator. The MMIS Re-procurement Manager will chair the weekly status meetings during the Development and Implementation Task and attend each formal project walk-through.

Any direction, written or oral, by the MMIS Re-procurement Manager or Contract Administrator, shall be binding on the Contractor. Whenever OHCA is required by the terms of the contract to provide written notice to the Contractor, the OHCA MMIS Re-procurement Manager or Contract Administrator shall sign such notice. The OHCA MMIS Re-procurement Manager or Contract Administrator will issue all notices regarding the failure to meet performance requirements and any assessments of damages under the provisions set forth in this chapter.

The Contractor shall designate a Contract Manager who shall have the authority to enter into any amendments on behalf of the Contractor and otherwise commit the Contractor to any course of action, undertaking, obligation or responsibility in connection with the Contractor's performance of this Agreement.

The Contractor shall designate a Project Manager who shall have day to day responsibility for supervising the performance of the Contractor's obligations under the Agreement. The Contractor shall not change the designation of its Contract Manager or its Project Manager without the Authority's prior written approval, which approval shall not be unreasonably delayed or withheld.

6.1.6 NOTICES

Any notice required or permitted to be given to a party shall be in writing and addressed as follows:

To OHCA:

MMIS Re-procurement Manager or Contract Administrator
Oklahoma Health Care Authority
4545 North Lincoln Boulevard, Suite 124
Oklahoma City, Oklahoma 73105

To the contractor: (to be completed)

Either party may change its addressee or address for the receipt of notices by notice given in accordance with this Subsection. For notices given by certified mail, return receipt requested shall be sufficient. Notices delivered by ordinary mail or in hand shall not be sufficient unless acknowledged in writing by the addressee.

6.1.7 ASSIGNMENT BY STATE

All rights, privileges and obligations arising under this contract shall be assigned to the Oklahoma Health Care Authority. The rights of the Authority under this Agreement shall be assigned to any other agency of the State of Oklahoma, with 10 day prior notice to the vendor.

Should assignment occur, the assignee Agency shall have all the rights and obligations of the assignor Authority, including the benefit of any purchase option credits accrued to the date of the assignment, but the obligations of the Contractor shall not be enlarged by any assignment.

6.1.8 ASSIGNMENT BY CONTRACTOR

Except as provided below, the contractor shall not assign, or in any way transfer any interest in, this Agreement without the prior written consent of OHCA. The determination as to whether such consent will be provided shall be within the sole discretion of OHCA.

In the event that the Contractor changes its corporate status in any way, through merger or other activity, the Contractor agrees to provide the Authority with advance notice of such action. The Authority may, in its sole discretion, modify or terminate this agreement if, in its judgment, the change in corporate status impairs the Contractor's ability to meet its obligations under this contract.

Any assignment or transfer of any interest under the Agreement shall be made explicitly subject to all rights, defenses, set-offs, or counterclaims which would have been available to OHCA against the contractor in the absence of such assignment or transfer of interest. This provision includes reassignment of the Agreement due to change of ownership of the contractor's firm.

6.1.9 CONDITIONS OF PAYMENT

Approvals. No payment obligation shall accrue under this Agreement, nor shall the Contractor be obligated to commence performance under this Agreement, nor will the Authority process invoices for any property or services delivered by the Contractor under this Agreement, unless and until this Agreement (including any supplements which identify deliverable items) has been approved by the Health Care Financing Administration, U.S. Department of Health and Human Services (USDHHS), and the

Oklahoma Director of the Division of Central Purchasing of the Department of Central Services or his/her designated representative.

Signed Agreement. The Office of Financial Management will withhold all payments otherwise due until it has received from the Oklahoma's Director of the Division of Central Purchasing of the Department of Central Services, a fully executed copy of this Agreement. For the purposes of this Section, the word "Agreement" shall also refer to any amendment to this Agreement.

Completed Delivery. Any item of equipment, software, maintenance, training or other property or services deliverable by the Contractor under this Agreement must be delivered before any charges can accrue on that item. All property and services due or deliverable on or by a specified date must be delivered before charges on any of them will accrue or be paid, unless some other arrangement is approved by the State of Oklahoma.

6.1.10 LOCATION OF VENDOR FACILITIES

Due to the nature of the contract and the need for close coordination with the Authority's personnel, the Contractor must maintain an office in Oklahoma and within a FIVE (5) mile radius of the OHCA location. This office must be utilized to house the Contractor's staff during the life of the Agreement for performance of MMIS Development and Implementation, Operations, and Maintenance and Modifications Task functions including, but not limited to:

- o contract administration/State liaison (key personnel);
- o claims receipt, pre-screening, and putting claims and other documents to microform;
- o data entry (hard-copy and EMC transactions);
- o business operations (check requests to OHCA, Office of Financial Management, accounts receivable handling, cash activity, check/remittance, advice mailing);
- o production of newsletters, manuals, and so forth;
- o provider relations and provider enrollment; and
- o report printing.

The Authority shall approve the location of the Contractor's Oklahoma office and computer installation(s) for all MMIS functions and tasks. The Contractor may not change the location(s) of its facility(s) except for good cause and with the prior written consent of the OHCA MMIS Re-procurement Manager or Contract Administrator, which consent shall not be unreasonably withheld.

In addition, the Contractor must maintain, and make available, office space for ten (10) Authority and/or consultant personnel for the entire duration of the MMIS Development and Implementation Task, and for two (2) Authority personnel for the

remaining term of the Agreement. This space must be contiguous to the Contractor's project staff during the respective tasks. The Contractor is responsible for all costs to acquire, furnish, operate, and maintain the Oklahoma State Office Suite as specified at ITB Subsection 3.2.2.

6.1.11 COOPERATION IN HEARINGS AND DISPUTES

The Contractor shall cooperate and participate in the resolution of Authority Fair Hearings and Provider Disputes at the request of the Authority.

6.1.12 COOPERATION IN FRAUD INVESTIGATIONS

The Contractor shall cooperate fully with the U.S. Department of Health and Human Services, the OHCA, and any other authorized local, state and federal agencies or law enforcement authorities in the investigation, documentation and litigation of possible fraud and abuse cases or any other misconduct involving any of the duties and responsibilities performed by the Contractor under the Agreement. The Contractor must agree that the U.S. Department of Health and Human Services, its authorized representatives, and those any other authorized local, state, or federal agency or law enforcement authority will have access to the same records and information as does the OHCA.

6.1.13 DELIVERABLES - SUBMISSION AND ACCEPTANCE

The Contractor shall perform its tasks and produce the required Deliverables by the due dates presented in the Contractor's Response to ITB Subsection 3.5 for the MMIS Development and Implementation Tasks. Twenty (20) copies of each Deliverable shall be delivered to the MMIS Re-procurement Manager, clearly identified as a Deliverable to distinguish it from other material.

As soon as possible, but in no event later than twelve (12) State of Oklahoma business days after receipt (not counting the date of receipt) of a Deliverable, the MMIS Re-procurement Manager shall give written notice to the Contractor of the Authority's unconditional approval, inability to approve pending correction, outright disapproval, or inability to respond to the deliverable until a future specified date. Notice of inability to approve pending correction or outright disapproval shall state the reasons for such conditions or outright disapproval as specifically as is reasonably necessary to indicate the nature and extent of the corrections required to qualify the Deliverable for approval.

As soon as possible, but in no event later than seven (7) State of Oklahoma business days after receipt of a notice of inability to approve pending correction or outright disapproval, the Contractor shall make the corrections and resubmit the corrected Deliverable.

As soon as possible, but in no event later than five (5) business days following resubmission of any Deliverable unable to be approved pending correction or originally outright disapproved, the MMIS Re-procurement Manager shall give written notice to the Contractor of the Authority's unconditional approval, inability to approve pending

correction, outright disapproval, or inability to respond to the resubmission of the Deliverable until a specified future date.

In the event that the MMIS Re-procurement Manager fails to respond to a Deliverable (such as, to give notice of unconditional approval, inability to approve pending correction, outright disapproval, or state the inability to respond until a specific future date as aforesaid) within the applicable time period, the Contractor may elect either of the following two (2) courses.

- o Notify the MMIS Re-procurement Manager in writing that it intends to proceed with subsequent work unless the response is received by a date to be specified in such notice. The date specified may not be earlier than five (5) business days following the date of receipt of the notice. If the response is not delivered by the specified date, the Deliverable shall be deemed to have been unconditionally approved on that day and the Contractor shall not be entitled to any equitable adjustment in time or price on account of any delay; or
- o Notify the MMIS Re-procurement Manager in writing that a response is required, and that it intends to delay subsequent work unless the response is received by a date to be specified in such notice. The date specified may not be earlier than five (5) business days following the date of receipt of the notice. If the response is not delivered by the specified date, the Contractor shall apply in writing to the MMIS Re-procurement Manager and in accordance with ITB Subsection 6.4.16, "SUSPENSION OF WORK," with any claims for delay, providing adequate substantiation therefor.

By submitting a Deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner which will, in concert with other tasks, meet the objectives stated or referred to in the Agreement. By unconditionally approving a Deliverable, the Authority represents only that it has reviewed the Deliverable and detected no errors or omissions of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding or denial of payment for the work completed. The Authority's approval of a Deliverable does not discharge any of the Contractor's contractual obligations with respect to that Deliverable, or to the quality, comprehensiveness, functionality, effectiveness or certification of the Oklahoma MMIS as a whole, or the Contractor's meeting of the requirements of the MMIS ITB.

6.1.14 COMPLETION OF MILESTONES

The completion of a Milestone shall be indicated by the unconditional written approval of all Deliverables comprising each Milestone by the OHCA.

Upon the Authority's unconditional approval of all Deliverables comprising each Milestone during the MMIS Development and Implementation Task, the Contractor shall, at the written request of the MMIS Re-procurement Manager, provide a structured walk-through of the entire MMIS. The walk-through shall include copies of support documentation and any visual aids normally used for this purpose for such State and Federal personnel as the MMIS Re-procurement Manager may select. The Contractor shall conduct each presentation at the time and place convenient to the State and Federal personnel in attendance as specified in the Authority's written request.

The Contractor may proceed to perform work on a succeeding Milestone during the MMIS Development and Implementation Task prior to the Authority's unconditional approval of all Deliverables comprising a preceding Milestone. However, this can only be done upon the conditions that all such work performed shall be entirely at the vendor's own risk and that the Authority shall have no obligation to work in concert with the Contractor or review any Deliverables relating to the succeeding Milestone(s). The Contractor shall be solely responsible for all costs relating to any changes, deletions or additions it may be required to make as a result of its failure to obtain all unconditional approvals for Deliverables comprising a Milestone.

6.1.15 DUE DATES

Whenever the due date for any Deliverable, or the final day on which an act is permitted or required by this Agreement to be performed by either party fall(s) on a day other than a State of Oklahoma business day, such date shall be the first State of Oklahoma business day following such day.

6.1.16 STATUS REPORTS AND CONSULTATION

Once each week, or at more frequent intervals, if the Authority should so require, until the commencement of the MMIS Operations Task, the contractor's MMIS Development and Implementation Project Manager and his/her necessary staff shall meet with the Oklahoma MMIS Re-procurement Manager and selected staff to discuss the Contractor's progress and performance under the Agreement.

No later than the fifth (5th) calendar day of each month commencing with the start of the MMIS Development and Implementation Task and continuing for the life of the Agreement, the Contractor shall submit a written MMIS progress report to the MMIS Re-procurement Manager or Contract Administrator with five additional copies. An additional copy shall be included in the monthly status report to HCFA. Each MMIS progress report shall provide a detailed description of the status of the Contractor's progress and performance under the Agreement. They will address all issues since the last progress report and shall be signed by the contractor's MMIS Development and Implementation or Operations Project Manager (as appropriate to the MMIS Task) or his or her designee.

Prior to the commencement of the MMIS Operations Task, each written MMIS progress report shall describe the tasks and deliverables completed, the tasks and deliverables scheduled for completion but not completed and reasons for such failure to

complete, and the progress expected to be made in the next reporting period. All work activities described shall be referenced to the approved work plan.

Subsequent to the commencement of the MMIS Operations Task, each written MMIS progress report shall describe any problems the Contractor has encountered in the performance of any of its responsibilities under the Agreement including but not limited to downtime episodes. Each report shall detail any problems discovered in the application software with emphasis on any system abnormalities or failures caused by the application problems and the corrective action taken and planned to prevent the failures or abnormalities from occurring or recurring. In addition, each report shall include the status of all change orders proposed, in negotiation, in development, in testing, or awaiting Authority technical sign-off, the required staffing reports, and proposed production schedules for the current and two (2) subsequent months.

At any time during the life of the Agreement, upon written request by the Authority, the Contractor shall promptly prepare and provide written Corrective Action Plans (CAP) reports in response to particular problems in the performance of work under the Agreement identified by the Authority. Each CAP shall include a description of the problem, the reason(s) why the problem occurred, corrective action plan(s) proposed to prevent the problem(s) from reoccurring and an implementation date for the corrective action plan(s) and shall be signed by the contractor's Project Manager.

At any time during the life of the Agreement, upon written request by the Authority, the Contractor will participate in formal progress review meetings with the MMIS Re-procurement Manager or Contract Administrator and, other Authority officials and employees and, at the option of the Authority, representatives of Federal or other State agencies.

At any time during the life of the Agreement, upon Contractor discovery of any problem which may jeopardize the successful or timely completion of its obligations, the Contractor shall notify the Authority's MMIS Re-procurement Manager or Contract Administrator orally. The oral notification shall be no later than the close of business of that day if the problem is discovered before 4:30 p.m., CT or no later than 9:30 am of the succeeding State of Oklahoma business day if the problem is discovered after 4:30 p.m., CT or on a State of Oklahoma non-business day. The Contractor shall follow the oral notification no later than three (3) business days later with a written analysis of the problems to the MMIS Re-procurement Manager or Contract Administrator, including in such notice the Contractor's recommendation for expeditious resolution of the problem.

6.1.17 POLICY DETERMINATIONS

The OHCA shall make and determine all policy relating to the operation of the Oklahoma MMIS. The Contractor may request of the MMIS Re-procurement Manager or Contract Administrator in writing that the Authority issue policy determinations or operating guidelines required for proper determinations or operating guidelines required for proper performance of the Agreement. Under such circumstances, the MMIS Re-procurement Manager or Contract Administrator will deliver to the Contractor a written

reply within ten (10) State of Oklahoma business days of his or her receipt of the Contractor's request. The Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines, unless and until they are superseded, suspended or revoked, so long as it does not act negligently, maliciously, fraudulently, or in bad faith.

6.1.18 CLAIM EDITS

The MMIS shall maintain edits to be applied to all claims. The Authority shall have the responsibility to establish the disposition of each edit, at any time. "Suspends" are claims which fail the edit process and must be resolved by the Contractor through internal processing, or by referral to the Authority for medical review and individual consideration.

No edit overrides may be applied without the prior written direction or consent of the Authority, and the Contractor shall create and maintain an audit trail of all edit overrides.

6.1.19 COST OR PRICING

To the extent applicable, the Contractor shall submit and shall require subcontractors hereunder to submit in accordance with Subpart 15.8 of Title 48, Federal Acquisition Regulations, cost or pricing data under the following circumstances:

- o Prior to the award of any subcontract, the total amount of which is expected to exceed \$100,000.
- o Prior to the execution of any contract or subcontract, change order, extension, or renewal which involves aggregate increases or decreases in cost plus applicable profits which are expected to exceed \$100,000 over the contract's or subcontract's term; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

The Contractor shall certify and shall require subcontractors to certify in a form satisfactory to the Authority that, to the best of their knowledge and belief, regarding the cost or pricing data submitted under this section. The certification must indicate that the data is accurate, complete, and current as of the date of agreement on the agreed upon price of the subcontract or of the contract or subcontract change.

The Contractor shall insert the substance of this section, including this paragraph, in each subcontract hereunder which is expected, when entered into, to exceed \$100,000 over its term. The only allowable exception is when the price thereof is based on adequate price competition, established catalog or market prices on commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

If the OHCA MMIS Re-procurement Manager or Contract Administrator determines that any price, including profit or fee, accepted in connection with this contract, or any cost reimbursable under this contract was increased by any significant

amount because the Contractor or any subcontractor furnished incomplete or inaccurate costs or pricing data not current, as was certified in the Contractor's or subcontractor's certification of current cost or pricing data, then such price or cost shall be reduced accordingly, and this contract and the subcontract, if applicable, shall be modified in writing to reflect such reduction.

To the extent the contract is subject to reduction under this Subsection by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Contractor shall include a clause in each subcontract requiring the subcontractor to indemnify the Contractor as appropriate. It is expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier subcontractors.

6.2 INTERPRETATION AND DISPUTES

The following Subsections address the provisions regarding interpretations and disputes for the Oklahoma MMIS.

6.2.1 CONFORMANCE WITH STATE AND FEDERAL REGULATIONS

The Contractor agrees to comply with all State and Federal laws, regulations, and policies as they exist or as amended that are or may be applicable to this contract, including those not specifically mentioned in this Section. Authority to design and develop modifications to the operational MMIS and/or to make software or operational changes to implement new State and Federal requirements will be given to the Contractor by the OHCA MMIS Re-procurement Manager or Contract Administrator and may entail a contract amendment (see ITB Subsection 6.3).

In the event that the Contractor may, from time to time, request the State to make policy determinations or to issue operating guidelines required for proper performance of the contract, OHCA shall do so in a timely manner, and the Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines and shall incur no liability in doing so unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith.

6.2.2 WAIVERS

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written agreement of the parties and approval of HCFA. Forbearance or indulgence in any form or manner by either party, in any regard whatsoever, shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply. Notwithstanding any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under the Agreement, or under law or equity.

6.2.3 SEVERABILITY

If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the State of Oklahoma and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

6.2.4 LEGAL CONSIDERATIONS

The contractor agrees to be bound by the laws of the State of Oklahoma and that the solicitation and this contract shall be constructed and interpreted in accordance with Oklahoma law in the event a choice of law situation arises. The contractor further acknowledges that nothing contained in the ITB, or in this contract, shall be construed as a waiver of the immunity from liability which would otherwise be available to the State of Oklahoma under the principles of sovereign immunity. In particular, the contractor agrees that the sole and exclusive means for the presentation of any claim against the State arising out of this contract, shall be in accordance with all applicable Oklahoma statutes and the contractor further covenants not to initiate legal proceedings in any State or Federal court in addition to, or in lieu of, any proceedings available under Oklahoma statutes.

6.2.5 DISPUTES

Any dispute arising under this Agreement that is not disposed of by agreement between OHCA's MMIS Re-procurement Manager or Contract Administrator and the contractor's Contract Administrator shall be decided by the MMIS Re-procurement Manager or Contract Administrator who shall commit the decision to writing and serve the contractor with a copy. The decision of the MMIS Re-procurement Manager or Contract Administrator shall be final and conclusive and in accordance with the notice provisions described above.

In the event of any such dispute or disagreement, the MMIS Re-procurement Manager or Contract Administrator and the Contractor's Project Manager will meet for the purpose of endeavoring to resolve such dispute. The parties shall meet as often as they deem reasonably necessary with respect to the matter at issue. The parties will discuss the problem and/or negotiate in good faith to resolve the dispute without necessity of any formal proceeding relating thereto. If the parties mutually conclude in good faith that amicable resolution through continued negotiation of the matter at issue does not appear likely, the MMIS Re-procurement Manager or Contract Administrator shall issue a statement in writing acknowledging the impasse within five (5) business days of such occurrence.

In connection with any appeal to the OHCA MMIS Re-procurement Manager or Contract Administrator under this paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Any appeal to the OHCA MMIS Re-procurement Manager or Contract Administrator must be filed within ten (10) business days of receipt of the OHCA MMIS Re-procurement Manager or Contract Administrator's written notification of impasse.

Pending final determination of any dispute hereunder, the contractor shall proceed diligently with the performance of the provisions of this Agreement and in accordance with the direction of the MMIS Re-procurement Manager or Contract Administrator.

6.2.6 NON-EXCLUSIVENESS OF REMEDIES

Resort to any remedy available to the Authority under this Agreement or at law shall not operate to prevent the Authority from seeking any other remedy available to it under this Agreement or at law, including Consequential Damages.

6.3 CONTRACT AMENDMENTS

The following Subsections address the provisions regarding amendments to the contract for the Oklahoma MMIS.

6.3.1 GENERAL AMENDMENT PROVISIONS

The Agreement may be modified or amended at any time by the mutual consent of the contractor and OHCA. All such Amendments shall be in writing and shall become effective only when approved by HCFA and all other applicable state authorities and subsequently executed by the parties hereto.

An approved contract amendment is required whenever a change affects the payment provisions, the scope of work, or the term of the contract. Formal contract amendments will be negotiated whenever necessary to address changes to the terms and conditions, the costs of, or the scope of work included under the Agreement.

If any change in the scope of work affects costs or the time required to perform other work, an equitable adjustment may be made in the payment provisions or delivery schedule, or both. Failure of the contractor to agree to an equitable adjustment shall be considered a dispute and resolved under the provisions described in ITB Subsection 6.2.5.

Either OHCA or the Contractor may request expansion of the scope of work covered by the contract or additional compensation in excess of the amounts bid for performance of this contract through a contract amendment. This request may be based on new requirements resulting from changes in State or Federal regulations and may require enhanced Federal funding support to implement. In general, changes requiring system modifications shall be performed as part of the Modifications Task support and shall not require a contract amendment or additional funding.

A formal proposal from the Contractor shall be submitted in response or to initiate a request for expansion of the contract or to implement major system changes which require an approved Advance Planning Document. That proposal will identify any additional staffing requirements and will present a work plan for the effort and an estimated budget.

Any expansion of work which results in a price change requires an approved contract amendment unless the activities or service that are requested are within the

general scope of work of a Medicaid Management Information (MMIS) contract but are not in the ITB or the proposal for this MMIS and, for which no FFP will be claimed, and for which additional compensation will be paid. No price change which results in additional payments to the Contractor will be effected without proven demonstration, when requested by OHCA, through the financial records required under this contract, that additional payments are warranted because of exhaustion of modification support hours.

No amendment to this Agreement shall be effective unless it is signed by authorized representatives of both parties, is approved by HCFA, is subject to appropriations and authorizations and is approved by the State of Oklahoma Director of the Division of Central Purchasing of the Department of Central Services or their designated representative.

If the expansion of work request is based on new requirements resulting from changes in State or Federal regulations, enhanced Federal funding support may be required to implement them. A formal proposal from the contractor shall be submitted in response to a request to implement major system changes which require an approved Advance Planning Document. That proposal will identify any additional staffing requirements and will present a work plan for the effort and an estimated budget. The contractor's proposal/response shall be submitted in writing no later than fifteen (15) calendar days after the request from OHCA. OHCA will either approve the estimate or request more information within ten (10) business days of receipt of the contractor's proposal.

OHCA may require the contractor to demonstrate, through the financial records required under this Agreement, that additional payments are warranted.

6.3.1.1 DEVELOPMENT AND IMPLEMENTATION TASK: STATEMENT OF WORK CHANGES

During development and implementation, the Contractor may consider that a written or oral communication, including any order, direction, instruction, interpretation, or determination, received from the OHCA MMIS Re-procurement Manager, or any OHCA agent or representative, or that any other act or omission of the OHCA or any OHCA agent or representative (an "Event") constitutes a change to the scope of the requirements of this ITB. Should this occur but not be plainly identified, labeled, or titled as such, the Contractor shall advise the OHCA MMIS Re-procurement Manager in writing within ten (10) State of Oklahoma business days of the Event and shall request the OHCA MMIS Re-procurement Manager's written confirmation of the Event.

The notice shall state:

- o the nature and pertinent circumstances of the communication, act, or omission regarded as a change in scope of the Oklahoma MMIS General Requirements or Scope of Work by the Contractor;

- o the date of the communication, act, or omission, and the identification of each individual involved in such communication, act, or omission, listing his or her name and function;
- o the identification of the documents involved;
- o the substance of any oral communications;
- o the particular technical requirements or contract requirements regarded as changed; and
- o the direct and foreseeable consequential effect of the communication, act, or omission regarded as a change to the scope of the requirements, including the number of hours required from the staff to accomplish the change and the manner and sequence of performance or delivery of supplies or services, identifying which supplies or services are or will be affected.

The OHCA MMIS Re-procurement Manager shall respond within ten (10) Oklahoma business days of receipt of the Contractor's notice, either:

- o to countermand the action or communications regarded as an Event;
- o to deny that the Event is a change in the scope of the requirements;
- o to confirm that the Event is a change to the scope of the requirements by issuance of a written notice; and
- o to advise the Contractor as to what additional information is required and establish the date by which this information shall be furnished if the information in the Contractor's notice is inadequate to permit a decision to be made.

If the Contractor complies with any order, direction, interpretation, or determination, written or oral, without providing the notice, in accordance with this section, OHCA shall not be liable for any increased price, delay in performance, or contract non-conformance by the Contractor.

If the OHCA Contract Administrator denies that the Event constitutes a change to the scope of the requirements, the OHCA MMIS Re-procurement Manager shall issue a final decision to this effect within a reasonable period of time, and the Contractor may proceed in accordance with ITB Subsection 6.2.5, DISPUTES.

Any Event by the Contractor under this section must be asserted within thirty (30) calendar days from the date of receipt by the Contractor of the written or oral communication.

For the purposes of ordering changes to the scope of the requirements, the term "OHCA MMIS Re-procurement Manager" shall not include any representative of the OHCA Contract Administrator, whether or not such representative is acting within the scope of his or her authority with one exception. That exception is in those instances where the OHCA MMIS Re-procurement Manager has notified the Contractor in writing of such exception. The Re-procurement Manager will cite the authority of this section, indicate that a specified individual has the authority to order changes to the scope of the requirements, and will include a description of the exact scope and duration of the individual's authority.

6.3.1.2 Operations Task

Either OHCA or the Contractor may request expansion of the scope of work covered by the contract or additional compensation in excess of the amounts bid for performance of this contract through a contract amendment. This request may be based on new requirements resulting from changes in State or Federal regulations and may require enhanced Federal funding support to implement. In general, changes requiring system modifications shall be performed as part of the Modifications Task support and shall not require a contract amendment or additional funding.

A written response from the Contractor shall be submitted to answer or to initiate a request for expansion of the contract, or to implement major system changes which require an approved Advance Planning Document. That response will identify any additional staffing requirements and will present a work plan for the effort and an estimated budget. Procedures and requirements are contained in ITB Subsections 6.3, 3.8, and 6.4.6.

6.4 PAYMENT

Payment for contractor services provided under this Agreement will be in accordance with the reimbursement approach defined in this section. Transition and Enhancement Phase payments will be made upon satisfactory completion and installation of all system enhancements at start of operations. Ongoing operations responsibilities will be reimbursed through fixed monthly installments. No separate reimbursement will be paid for Transition Task activities or for contractor participation in the Post-Implementation Assessment Task. Reimbursement for hours spent by contractor management staff is already included with the operations payment. Time requests from systems staff are chargeable to modification support. Payments for the optional DSS/Data Warehouse will be for the Development and Implementation Task and the Operations Task. Details of the reimbursement approaches to be followed for the defined tasks are described in the Subsections below.

OHCA shall pay the contractor within thirty (30) calendar days after receipt of the contractor's invoice and approval of the OHCA MMIS Re-procurement Manager or Contract Administrator, if granted after the invoice is received. The invoice shall state, at a minimum, what the payment is for (i.e., month of contractor service, mailing charges, completion of design for MMIS enhancement, etc.), the Contract number and the amount claimed.

6.4.1 DEVELOPMENT AND IMPLEMENTATION TASK PAYMENTS

A Firm Fixed Price, which shall be the Contractor's charge for completion of all milestones for the MMIS development and implementation tasks, shall be derived from Pricing Schedules B1-B6 and for the DSS/Data Warehouse design, development, testing, and implementation, shall be derived from Pricing Schedule F.

6.4.1.1 MMIS DEVELOPMENT AND IMPLEMENTATION TASK

The Contractor shall be paid for performance of Development and Implementation Task activities for the Oklahoma MMIS in accordance with the following schedule of key contract milestones:

- o State approval of all Design Subtask milestones;
- o State approval of all Development/Testing Subtask milestones;
- o State approval of all Acceptance Test Subtask milestones;
- o State approval of all Conversion Subtask milestones;
- o State-approved Contractor start of full MMIS operations, including all reporting functions; and
- o receipt of written approval for Federal certification of the Oklahoma MMIS.

For the successful achievement of these milestones, payment will be made on the following basis:

- o fifteen percent (15%) of Development and Implementation Task costs bid on Pricing Schedule B upon State approval of all Design Subtask milestones;
- o twenty-five percent (25%) of Development and Implementation Task costs bid on Pricing Schedule B upon State approval of all Development/Testing Subtask milestones;
- o ten percent (10%) of Development and Implementation Task costs bid on Pricing Schedule B upon State approval of all Conversion Subtask milestones;
- o fifteen percent (15%) of Development and Implementation Task costs bid on Pricing Schedule B upon State approval of all Acceptance Test Subtask milestones;
- o ten percent (10%) of Development and Implementation Task costs bid on Pricing Schedule B upon State-approved Contractor start of full MMIS operations, including all reporting functions; and

- o twenty-five percent (25%) of Development and Implementation Task costs bid on Pricing Schedule B upon receipt of written approval for Federal certification of the Oklahoma MMIS.

6.4.1.2 DSS/DATA WAREHOUSE DEVELOPMENT AND IMPLEMENTATION TASK

The Contractor shall be paid for performance of Development and Implementation Task activities for the DSS/Data Warehouse in accordance with the following schedule of key contract milestones:

- o State approval of all Design Subtask milestones;
- o State approval of all Development/Testing Subtask milestones;
- o State approval of all Acceptance Test Subtask milestones; and
- o State-approved Contractor start of DSS/Data Warehouse operations.

For the successful achievement of these milestones, payment will be made on the following basis:

- o twenty percent (20%) of Development and Implementation Task costs bid on Pricing Schedule F upon State approval of all Design Subtask milestones;
- o thirty percent (30%) of Development and Implementation Task cost bid on Pricing Schedule F upon State approval of all Development/Testing Subtask milestones;
- o twenty percent (20%) of Development and Implementation Task costs bid on Pricing Schedule F upon State approval of all Acceptance Test Subtask milestones;
- o fifteen percent (15%) of Development and Implementation Task costs bid on Pricing Schedule F upon State approval of all Conversion Subtask milestones; and
- o fifteen percent (15%) of Development and Implementation Task costs bid on Pricing Schedule F upon State-approved Contractor start of DSS/Data Warehouse operations.

6.4.2 PAYMENT WITHHOLDING

The parties both recognize that time is of the essence for the successful implementation and operation of this project. If the Contractor fails to complete a milestone by the due dates presented in the Contractor's Response to ITB Requirement 4.2.8, the OHCA MMIS Re-procurement Manager shall have the discretion to withhold any payment due under this section until the Contractor has completed a subsequent Milestone in accordance with its proposed due dates or the Authority has accepted the

MMIS system (that is, the Contractor has successfully completed the MMIS Acceptance Testing Subtask), whichever event occurs first.

6.4.3 OPERATIONS TASK

The contractor shall be paid the firm fixed price bid in effect for each year of operations, in equal monthly installments. Such payments shall include all charges for data processing, claim/encounter processing, systems modification support, and contractor responsibilities as described in Sections 3 of this ITB. Cost for postage, presort, ID cards, and telecommunication costs to and from OHCA to the local contractor site will be separately reimbursed at direct cost and will be subject to separate reporting and monthly invoicing procedures. If the State elects to incorporate the optional DSS/Data Warehouse, the Contractor shall be paid the firm fixed price bid in effect for each year of operations, in equal monthly installments. Operations costs shall include all charges related to the operation of the DSS/Data Warehouse and all other Contractor responsibilities described in ITB Section 3 for this function's operations task.

6.4.3.1 Adjustment of Operations Payments

The total amount payable each year for the MMIS non-DSS/Data Warehouse services shall remain fixed unless the adjudicated claim/encounter volume falls outside the estimated range for that year. Should the actual claim/encounter volume for a given year fall outside the estimated volume, a year-end financial adjustment to the amount payable for operations for that year will be made using the following procedure as incorporated in a formal contract amendment or the Agreement for that year:

- o A unit value will be calculated by dividing the price bid for that year by the maximum estimated number of adjudicated claims/encounters processed for that year.
- o If the actual volume of adjudicated claims/encounters processed during the operational year falls below the minimum figure in the volume range, the contractor shall reimburse the State a portion of the fixed price as defined by the following calculation: the minimum base figure for the estimated claim/encounter volume range minus the actual claim/encounter volume times forty percent (40%) of the calculated unit value for the contract year. The claim/encounter volume parameters will be adjusted to reflect a twenty percent (20%) variance around a new midpoint based on that actual claim/encounter volume times the expected volume increase factor for that next year.
- o If the actual adjudicated claim/encounter volume exceeds the estimated volume range for the contract year, the State will make an additional payment to the contractor in accordance with the following calculation: actual claim/encounter volume minus the highest estimated volume figure times forty percent (40%) of the calculated unit value for the contract year.

- o If the adjudicated claim/encounter volume for year-end exceeds the estimated range for that year, the claim/encounter volume parameters for the next year will be automatically adjusted to reflect a twenty percent (20%) variance around a new midpoint that is based on the actual claim/encounter volume times the expected volume increase factor for each year.

Any adjustment in the fixed price payable to the contractor for operations shall be dependent on the verification and certification that actual claim/encounter volume counts are accurate and fully consistent with the definition of a claim as specified in ITB Subsection 6.4.4 below.

Contractor reimbursement for option years shall be negotiated using the following procedure and incorporated into the Agreement in effect for that year:

- o For the first option year only, the operations price in effect for year 5 shall be reduced by an amount, agreed to by the State and the contractor, that represents the reasonable costs for turnover activities.
- o A unit value for an option year will be calculated as the price in effect for the current year, divided by the maximum claim volume estimate for that year.
- o The unit value shall be adjusted by an amount not to exceed forty percent (40%) of the annual increase of the consumer price index (CPI) for the Oklahoma City SMSA for the most recent year.
- o A maximum estimate of claim/encounter volume for the option year will be established by OHCA.
- o The option year price will be calculated as the unit value multiplied times the maximum estimated claim/encounter volume for the option year.
- o Contractor payments will be made in equal monthly installments.
- o Year-end financial adjustments will be made according to the procedures defined for base contract operations years.

Operations costs shall include all charges for system maintenance and modification support, report production, claims receipt and processing, and all other Contractor responsibilities described in ITB Section 3 for those tasks. Any additional modification hours above the 57,600-actual-hours included in the firm fixed claim price will be paid at the firm fixed price per modification hour in Pricing Schedule E.

The Contractor shall be required to develop an automated fee billing report which displays the total number of claims processed in each billing period and year-to-date totals of all claims processed by claim type. In addition, the fee billing report must present work-in-process statistics, by work station, as well as counts of disallowances by reason. The format of the fee billing report shall be subject to Authority approval.

In the first month at the start of operations for which full system operation is not available, including reporting subsystems, no operations payment shall be available, nor shall it be recoverable.

During ongoing operations, if major portions of the system are not operational, for example, MARS and utilization management functions, the State may reduce the amount of the monthly payment by twenty-five percent (25%) for each month major portions of the system are not fully operational.

6.4.4 DEFINITION OF A CLAIM

For the purpose of claim/encounter volume accounting and reconciliation of changes in contractor reimbursement, the following definitions, subject to the qualifiers also noted, shall apply to administrative processing counts tracked and reported by the contractor. The contractor shall certify and demonstrate that the definition and accounting of claims/encounters processed for the purposes of possible adjustments is in conformance with the definition of a claim as follows:

- o **Inpatient hospital, outpatient hospital, and long-term care claims (UB-92), and NTMC claims (HCFA-1500)** - A claim is a paper document or an EMC record requesting payment for services rendered during a statement period for which there are one (1) or more revenue or procedure codes.
- o **Institutional Medicare crossover claims (inpatient, outpatient, and nursing home)** - A claim is a paper document or an EMC record requesting payment for services rendered during a statement period.
- o **Pharmacy Claims** - A claim is each detail line item of a paper document or an EMC record requesting payment of a specific service code rendered to a recipient by the billing provider.
- o **All other claim types** - A claim is a line item on a paper document or an EMC record requesting payment for services rendered during a statement period for which there is one (1) HCPC or other service code.
- o **Managed care encounters** - Encounter data shall be tracked as a claim transaction for accounting purposes and counted as a “shadow claim” when submitted to the MMIS for reporting purposes by the managed care entity. Accounting of shadow claims shall be in accordance with the existing accounting definitions above for fee-for-service claims. Primary care case managers may, in the future, continue to submit claims for services to managed care recipients using existing claim forms.
- o Adjustments to paid claims are not countable as a claim, regardless of the number of adjustments filed to a paid claim or the reason for the adjustment.

- o All claims which require reprocessing due to errors caused by the contractor in processing or due to system design are not chargeable and must be reprocessed at contractor expense.
- o Electronic media claims (EMC) are defined for reimbursement purposes to be identical to paper claims regardless of EMC record definition or media.

No transaction shall be counted as a claim that does not meet the specific criteria stated above. Specifically excluded are claim header/trailer records, financial transactions, adjustments, cost settlements, file or system inquiries, prior authorization requests, on-line updates, file updates, claim correction transactions, and capitation payments through health plan rosters, gatekeeper fees, or separate capitation rates paid to primary care providers and authorized PCCM networks.

Also excluded from the claim counts shall be mass adjustments, Prospective Drug Utilization Review/Electronic Claims Management rejections or reversals, and reprocessing due to retroactive rate changes or errors caused by incorrect contractor staff actions or inaccurate system data or processing. Claims returned to providers as a result of manual prescreening of receipts or after entry into the system when edit codes considered by the State as a prescreening criteria are posted and other claims are deleted by the system and later resubmitted, shall not be included in claim counts.

The contractor shall provide monthly contract administration summary reports which identify, by claim type, the number of claim documents, EMC transactions, and encounters received; the number of items input; and inventory on hand, claims returned to providers, and, by claim type, the number of claims or encounters paid, denied, and adjusted for the month. All counts and totals shall be unduplicated and shall reconcile to other claims processing and payment reports.

Regardless of whether claims/encounters are defined as a document or a line-item under the criteria stated above, counts of inventory processing detail shall be maintained and reported by document, claim line, and encounters counts shall be maintained and reported.

6.4.5 MAINTENANCE TASK

The cost for providing ongoing systems maintenance support, as defined in ITB Subsection 3.7, are all inclusive costs. As such, they include machine time, person time, documentation, overhead, and so forth. The all-inclusive costs must be included in the fixed price bid for each contract operations year.

6.4.6 MODIFICATIONS TASK

The cost for providing ongoing systems modification support, as defined in ITB Subsection 3.8, are all inclusive costs. As such, they include machine time, person time, documentation, overhead, and so forth. The all-inclusive costs must be included in the fixed price bid for each contract operations year.

As described in ITB Subsection 3.8.2, this task requires full-time, on-site support from:

- o a Modification Task Manager, and
- o eight (8) systems analysts.

Additionally, the contractor shall also provide other full-time programmer/analysts on an ongoing basis for modification support. This support can be provided off-site. The state will have access to three thousand four hundred and fifty (3,450) hours of off-site support time available each contract month for a total, of both on-site (1,350) and off-site support, of four thousand and eight hundred (4,800) available modification hours per contract month.

Each modification staff person is expected to contribute 150 hours of productive work per month. This number takes into account vacation time, sick leave, training and other activities necessary to promote a stable, well trained and compensated staff member. However, the required hours must only include productive hours (as defined by the State) and may not be made up of activities such as corporate orientation, human resource training, and so forth. Productive hours are only those hours spent which directly contribute to the modification of the OKMMIS. Only such items as coding, requirements definition meetings, system testing, system documentation, and JAD sessions can be counted toward the productive hours. The hours devoted to supervision or management can be counted as 'productive' hours but can make up no more than 15% of the total modification hours reported. For example, a team of ten (10) modification staff must contribute 1500 hours of productive work per month. Of the 1500 hours, 225 can be devoted to supervision or management.

All modification staff hours must be reported to the State on a monthly basis. The hours must be broken down by the type of activity performed. All modification staff hours must be tractable back to the employee's time sheets and are subject to monthly audit by the State or the State's independent auditor. All reported hours must indicate the staffing level of the employee performing the activity. All modification staff hours must be traceable back to the project for which the work is being performed.

Hours will be used and can only be credited against the 4,800-actual-hour pool for work performed on State-approved change requests. For each hour that is not used in a contract month, the State shall have the option of rolling over the unused balance to the next month or recovering contracted charges for each hour not used. The recovery of funds from contract payments shall be in accordance with this section of the ITB and is not to be construed as a damage or indicator of contract non-performance; rather, it is an adjustment of actual to estimated level of effort in providing system modifications support. Recovered funding will be established through the all-inclusive hourly rates indicated in Appendix H. Any unused hours may be carried forward, at State option. Unused hours may be used in lieu of requesting additional support through a contract amendment. Requests for additional full-time on-site or off-site modification support beyond the monthly 4800 hours will be at the rates established through the all-inclusive hourly rates indicated in Appendix H.

6.4.7 TURNOVER TASK

No separate payment will be made for the Turnover Task activities defined in ITB Subsection 3.9. Any anticipated costs should be included in the price bid for the last full year of operations under the base contract on Pricing Schedule C5 for MMIS and on Pricing Schedule G5 for the DSS/Data Warehouse.

To provide a Contractor incentive to fully support the turnover of the Oklahoma MMIS, supporting files, and other documentation to the State or the successor Contractor, ten percent (10%) of the monthly contract operations payments for the last six (6) months of the contract will be retained until all turnover responsibilities are completed.

6.4.8 RETAINAGE

The State shall require payment retention (retainage) in an amount equal to ten percent (10%) of each invoice submitted for payment. After a three (3) month period from the submission of the invoice, the State shall review the contractor's performance and if performance has been satisfactory, the State shall release the retainage for the preceding three (3) month period. The State shall be the sole arbiter of the status of the contractor's performance. In addition, the retainage provisions of ITB Subsection 6.4.6 shall also apply.

Following the expiration of the contract, retained fees shall be released to the contractor after certification by the State that all services as specified under the contract have been satisfactorily performed.

The retainage discussed above will be applied against all tasks performed in the Planning, Management and Transition Phase as well as for the Operations Phases.

6.4.9 DEDUCTIONS FROM PAYMENTS

The State may, following proper notification to the Contractor, deduct from any payments due the Contractor the calculated amount of recovery for any assessed consequential or liquidated damages, or annual adjustments in operations payments due to a lower-than-estimated claim volume or modification support. All offsets against payments will be made in accordance with the procedures defined by the OHCA MMIS Re-procurement Manager or Contract Administrator.

The State shall perform a monthly claims processing quality control assessment to ensure OHCA's expectations for the accuracy of data entry input, edit/audit dispositions, and other claims adjudication-related decisions are met. If errors of any kind are found from these reviews that are attributable to the Contractor and which, in total, exceed three percent (3%) of the number of claims processed during that month, or if the total claims with errors have a dollar value exceeding one percent (1%) of the total program dollars paid out for that month, then one percent (1%) of the operations payment owed to the Contractor for that month shall be deducted by the State. This deduction shall occur for

all months in which the error rate found during monthly quality control assessment activity performed by OHCA staff exceeds the number or dollar thresholds.

All error-related payment offsets shall be made in accordance with the procedures defined by the OHCA MMIS Contract Administrator and will occur with the next subsequent payment due to the Contractor unless another arrangement is made, in writing, with the OHCA MMIS Re-procurement Manager or Contract Administrator.

Any offsets assessed for overall quality control problems shall not affect the State's rights to determine actual consequential damages for duplicate payments or overpayments to providers.

6.4.10 PROHIBITION AGAINST ADVANCE PAYMENTS

No payment shall be made by OHCA in advance of, or in anticipation of, services actually performed and/or supplies furnished under this Contract. Monthly invoices must be submitted for work performed the previous month.

6.4.11 INVOICE PROCESSING

The Contractor agrees to submit to the Authority its invoices for one-time charges such as milestone acceptances promptly following the delivery and acceptance of such goods and services. The Contractor agrees to submit to the Authority its invoices for recurring charges on or about the last day of each calendar month for which such charges are incurred or as quickly as "actual" costs are received. Invoices shall be submitted in such form as the OHCA may require. The Authority will review each invoice and, within seven (7) State of Oklahoma business days after its receipt, either approve it and deliver it for payment, or return it to the Contractor with a statement of the reasons for its rejection.

6.4.12 REIMBURSEMENT BASIS COSTS

The following Subsection addresses the only item that shall be reimbursable to the Contractor monthly for the "actual" costs.

6.4.12.1 Postal Costs

All postage required for correspondence, policies, billing instructions, and forms relating to the operation of the MMIS shall be paid by the Contractor who shall be reimbursed monthly for its "actual" costs. The Contractor shall exert all reasonable efforts to employ any commercially available techniques such as bulk mailing, consolidation of mailing and zip code pre-sorting or the use of carriers other than the United States Postal Service to reduce any postage costs assumed by the Authority. For the purpose of this section, "postage" shall include amounts charged by commercial carriers, except that the Contractor shall not employ the services of commercial carriers without the prior written approval of the OHCA Contract Administrator.

6.4.13 SUPPLIES

The Contractor shall acquire, store and disburse during the entire life of the Agreement, at its expense all forms, paper, microfilm, microfiche, film, magnetic tapes

and all other supplies necessary to document, record or transmit information or to perform its processing functions in connection with the successful MMIS design, development, testing, implementation, operation, maintenance, and modification.

6.4.14 RETURNED PROVIDER CHECKS

Throughout the Agreement, the Contractor may receive returned provider checks drawn on the State's account. For those returned due to incorrect or incomplete mailing address, within five (5) business days of receipt (or the Authority's forwarding) the Contractor shall research the correct address, re-mail the check, and notify the Authority weekly in writing of all re-mailings.

All non-State provider checks, checks for which a better address cannot be reasonably found, and all other checks sent to it for any reason, shall be delivered to the Authority within two (2) business days from the date of Contractor's receipt of such checks. Whenever possible, the Contractor shall record sufficient identifying information for each returned check to trace it back to the production cycle of its issuance, the reason for return, and the provider(s) making the return.

6.4.15 RECOUPMENT AND ERRONEOUS PAYMENTS

During the MMIS Operation Task, the Authority may direct the Contractor to recoup amounts from sums payable to the provider. A recoupment shall consist of a negative adjustment to a previous payment(s). The Contractor shall not effect any recoupments except upon the prior written authorization of the MMIS Contract Administrator or his/her written designee.

An erroneous payment is such part or all of any payment made with respect to a claim which should not have been paid according to the then applicable criteria for payment of that claim when applied to the information provided by the Authority prior to the processing of that claim. The Contractor shall be liable to the Authority for all erroneous payments. Upon the Contractor's discovery of an erroneous payment, the Contractor shall notify the Authority orally and in writing within twenty-four (24) hours of its discovery. All of the circumstances relating to the cause and the effect of each such error, including the identification of each provider affected, the amount of overpayment or underpayment made to the provider, and the identification of all affected claims, shall be furnished to the Authority as quickly as possible but in any event no later than five (5) State of Oklahoma business days after discovery.

Upon its receipt of a written direction from the MMIS Contract Administrator ordering it to undertake a recoupment, the Contractor shall complete all steps necessary to implement the recoupment for all affected claims before the end of the next pay cycle occurring after its receipt of the direction. In the event that the volume of claims affected by the direction or the complexity of the recoupment task is so great as to make it impossible for the Contractor to fulfill the requirements of the preceding sentence, the Contractor shall notify the MMIS Contract Administrator in writing, within twenty-four (24) hours of its receipt of the direction, of the earliest time frame within which it can implement the recoupment. After consideration of the circumstances described by the

Contractor, the MMIS Contract Administrator shall grant in writing whatever extension of time he or she deems necessary to implement the recoupment. The Contractor shall pay to the Authority any portion of an erroneous payment not recouped within one hundred eighty (180) calendar days of its receipt of the direction initiating its recoupment. The Contractor shall make such payment to the Authority within seven (7) calendar days of the expiration of the one hundred eighty (180) calendar day period.

The Authority shall not be liable to the Contractor for any repayment amount due which is not recovered by recoupment from providers. The Contractor may only initiate independent recovery procedures and actions with the prior written approval of the OHCA Contract Administrator once the recoupment process described herein has been completed and a repayment amount remains outstanding. If the Authority recovers any erroneous payments for which the Contractor has reimbursed the Authority, the Authority shall notify the Contractor who shall then submit a standard State invoice for the returned amount.

6.4.16 SUSPENSION OF WORK

At any time during the MMIS Development and Implementation Task, the OHCA Re-procurement Manager may order the Contractor by written notice to suspend all or any part of the work for such period of time as the OHCA Re-procurement Manager may determine to be appropriate for the convenience of the Authority.

If, without any fault or negligence of the Contractor, the performance of all or any part of the work under the Agreement is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the OHCA Re-procurement Manager or Contract Administrator or any other authorized person acting on behalf of the OHCA Re-procurement Manager or Contract Administrator, the Authority or any agent or representative thereof in the administration of the Agreement, or by their failure to act within the time specified in the Agreement (or if no time is specified, within a reasonable time), the OHCA Re-procurement Manager shall make an adjustment for any increase in the cost of performance of the Agreement or in the schedule necessarily caused by the unreasonable period of such suspension, delay, or interruption, subject to the Contractor's right to appeal the OHCA Contract Administrator's determination of the adjustment pursuant to ITB Subsection 6.2.5, "DISPUTES." No adjustment shall be made to the extent that performance by the Contractor would have been prevented by other causes if the work had not been so suspended, delayed or interrupted.

No claim for suspension, delay or interruption under the Agreement under this Section shall be allowed for any costs incurred more than twenty (20) calendar days before the Contractor shall have notified the OHCA Re-procurement Manager in writing of the act or failure to act involved (but this requirement shall not apply where a suspension order has been issued).

6.5 GUARANTEES, WARRANTIES, AND CERTIFICATIONS

The following Subsections address guarantees, warranties, and certifications regarding the Oklahoma MMIS.

6.5.1 SUBCONTRACTS

None of the services to be provided by the contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without the prior written consent of OHCA. Subcontracts must be approved in writing by OHCA prior to the effective date of any subcontract. All subcontracts included in the Proposal shall require review and approval by OHCA prior to start of work. The prime contractor shall be wholly responsible for performance of all work performed under the Agreement whether or not subcontractors are used. The determination of whether such consent will be provided shall be within the sole discretion of OHCA.

Any subcontract to which OHCA has consented shall be attached to the Agreement and made a part thereof and shall in no way alter the terms and conditions therein. No subcontract or delegation shall relieve or discharge the contractor from any obligation or liability under the Agreement. The subcontractors are subject to the same conditions as the prime contractor and subsequent contract Amendments. Performance of any work by “contract employees” hired by the contractor shall be considered the sole responsibility of the prime contractor and not be construed as a subcontracting relationship.

Subcontracting of contract responsibilities cannot exceed, in aggregate, forty percent (40%) of the work performed under this Contract. Joint bids by two (2) or more parties will not be accepted and must comply with subcontracting rules.

The provisions of the following clauses shall be incorporated in any subcontracts which relate to Contractor services for the Oklahoma MMIS:

- o ITB Subsection 6.5.13 Hold Harmless
- o ITB Subsection 6.6.1 Employment Practices
- o ITB Subsection 6.6.3 Independent Capacity of Contractor Personnel
- o ITB Subsection 6.11.2 Financial Audit Requirements
- o ITB Subsection 6.12.1 Ownership of the System
- o ITB Subsection 6.12.4 Confidentiality of Information
- o ITB Subsection 6.12.5 Inspection of Work Performed

6.5.2 WARRANTY

Notwithstanding prior acceptance of deliverables or software, the contractor shall expressly warrant all delivered programs and documentation as properly functioning when installed and compliant with the terms of the Agreement thereafter. The contractor must correct all errors and design deficiencies in the system enhancements and improvements installed at start of operations and in subsequent system modifications. Incorrect or defective programs and documentation shall be replaced within one (1) calendar week of notification from the MMIS Re-procurement Manager or Contract Administrator of such deficiencies or within such period as may be necessary to make

correction(s) using all due diligence and dispatch as agreed upon between OHCA and the contractor.

If the contractor fails to repair an identified error, deficiency, or defect within one (1) calendar week, OHCA may, at its sole discretion, act to repair, and the contractor expressly agrees to reimburse the State for all costs incurred thereby. This warranty shall be in effect throughout the term of the Contract and for three (3) months thereafter. Deficiencies properly noted before expiration of the warranty shall be covered regardless of such expiration. System modifications and other changes made during the contract period shall also be covered by this warranty.

6.5.3 SITE PREPARATION

No item of equipment shall be delivered to the Authority or accepted unless and until the Contractor has determined and certified that the installation site for that item meets the site specifications furnished by the Contractor (and approved by the Authority) and that no further site preparation is necessary. If additional site preparation is required, the Contractor will reimburse the Authority for the cost thereof, if the additional cost is due to an error in Contractor specifications or certifications of that site.

6.5.4 DELIVERY AND INSTALLATION

The Contractor will arrange for transportation, delivery, and installation of the equipment at the Authority's/Provider's location, subject to ITB Subsection 6.5.3, "SITE PREPARATION."

The equipment shall be delivered and made operational to the Authority according to the approved Work Plan schedule. If the Contractor fails to make delivery within the agreed-upon period for reasons other than failure of the Authority/Provider to meet site specifications, in addition to any other legal remedies the Authority may have, the Authority shall have the right to cancel its approval of the placement order at any time between the expiration of the applicable period and actual delivery. Otherwise, a placement order may be canceled, or delivery postponed, only once, by written notice given not less than thirty (30) calendar days before the initially scheduled delivery date.

6.5.5 EQUIPMENT IDENTIFICATION

The Authority reserves the right, for inventory purposes only, to require the Contractor to affix a label to all rented, leased, or purchased equipment obtained from the Contractor under this Agreement. The label will identify the equipment as "State of Oklahoma" and contain the manufacturer's serial number or the Authority's internal property number. If affixed, the label will be removed by the Contractor at the expiration of the lease or rental term for leased or rented equipment.

6.5.6 ACCEPTANCE TEST

Except as provided hereinafter, no charges will accrue to the Authority for any leased, rented or purchased item of Equipment, Software or Feature ordered under this Agreement until the item of Equipment, Software or Feature has passed an Acceptance

Test. An item of Equipment, Software or a Feature shall be deemed to have passed the test once it has been delivered, installed at the site, and is operational based on the following definitions and conditions:

- o the **Delivery Date** is the date on which the user (Authority) receives the Equipment, Software or Feature;
- o the **Installation Date** is the date on which the Contractor certifies that the item of Equipment, Software or the Feature is installed at the site and ready to operate pursuant to Contractor's installation policy;
- o the **Acceptance Date** is the date on which the Equipment, Software or Features has operated effectively for ninety (90) continuous calendar days;
- o the **Performance Period** is the period between the Installation Date and the Acceptance Date;
- o for leased, rented or purchased Equipment, Software or Features, charges will be due and payable by the Authority on the Acceptance Date; and
- o for purposes of determining the date as of which charges will be due and payable, any delay of installation or the start of the Performance Period not the responsibility of Contractor will reduce the required number of Performance Period days of consecutive operation on a one-for-one basis.

In the event an item of Equipment, Software or a Feature does not pass the Acceptance Test during the initial Performance Period, the Acceptance Test shall recommence at a new Installation Date and continue until the required number of consecutive business days is achieved. If an item of Equipment, Software or a Feature fails to pass the Acceptance Test after ninety (90) calendar days from its Installation Date, the Authority may at its option request and receive a replacement, or accept the Equipment at its demonstrated level of performance. Such acceptance does not release the Contractor from any other obligation under the Agreement, including, but not limited to, ITB Subsection 6.8, "LIQUIDATED DAMAGES - FAILURE TO MEET PERFORMANCE REQUIREMENTS." Acceptance test measurements are as follows:

- o The **Acceptance Test Level** for an item of Equipment or a Feature is computed by dividing Downtime (as defined below) for that item or feature by Operational Use Time, multiplying the result by one hundred (100), and subtracting that result from one hundred percent (100%).
- o **Operational Use Time** as defined herein shall be the number of hours the Equipment, Software or Feature must be available to the Authority in the ninety (90) calendar day test period.

- o **Downtime** for an item of Equipment, Software or a Feature is defined as **Operational Use Time** hours during which the item of Equipment, Software or Feature is inoperable because of causes other than those which are external to the Contractor's control. **Downtime** for each incident shall run from the time the Authority contacts the Contractor's Project Manager (or designated representative) by telephone until access to the functionality is restored to the Authority in proper operating condition.

6.5.7 MAINTENANCE ACCEPTANCE

The Contractor shall be responsible for all maintenance of equipment and software related to this Agreement, at no additional cost to the Authority above the prices proposed in the Contractor's Pricing Schedules B1 through B5, C1 through C5, F and G1 through G5 for the period of time the MMIS and DSS/Data Warehouse is operated.

The Contractor shall provide and maintain, as required in ITB Subsection 3.7, a staff of systems professionals in the Maintenance Support Group. These individuals, and all of their required equipment, space, supplies and overhead, shall be provided to the Authority pursuant to this Agreement. The staff shall be provided at no additional cost to the Authority above the prices proposed in the Contractor's Pricing Schedules C1 through C5 and G1 through G5 for the period of time the MMIS and DSS/Data Warehouse application processing is operated.

6.5.8 RISK OF LOSS

The Contractor (and its insurers, if any) shall bear all risk of loss to the equipment or software which occurs in transit to the Authority site. The risk of loss or damage to purchased equipment shall remain with the Contractor until the Authority has accepted the equipment.

The Contractor shall also bear the risk of loss or damage to leased or rented equipment during the State's use and possession thereof until the Authority exercises its purchase option and title has passed to the State.

In no event shall the Contractor be liable for loss or damage due to the negligence of the State or its providers.

6.5.9 TITLE

Title to each item of equipment sold to the Authority under this Agreement shall remain with the Contractor until the purchase price for each item (reduced by any set-offs or credits), has been paid by the Authority. Title free of any encumbrances, shall then pass to the State, and the Contractor shall then execute and deliver such instruments of transfer as the Authority may reasonably require. All equipment purchase payments, under this contract, shall be scheduled for completion prior to the end of the Base Contract Period.

Title to each item of equipment leased or rented under this Agreement shall remain in the Contractor's name until the purchase option has been exercised and the option price is paid. Thereupon, title shall pass to the State, and the Contractor shall then execute and deliver such instruments of transfer as the Authority may reasonably require.

Title to any accessories furnished by the Contractor shall follow title to the machines to which they relate.

6.5.10 WARRANTIES

With respect to each item of equipment (machine) to be delivered hereunder, the Contractor represents and warrants as follows:

- o Each machine delivered for purchase hereunder shall be new. "New" means unused since its manufacture, but new equipment may contain some components that are not new. In the case of leased equipment, the Contractor may provide remanufactured or reconditioned equipment, if that fact is disclosed before the lease obligation is undertaken by the Authority, and if the equipment is warranted to operate as new.
- o The Authority's use and possession of any machine delivered hereunder will not be interrupted or disturbed by the Contractor or by any person claiming by, under or through the Contractor, provided the Authority is not in default of any payments due for that machine or otherwise in breach of this Agreement. None of the equipment shall be subject to any lien, claim, or other encumbrance which is inconsistent with this warranty.
- o Each machine delivered hereunder shall operate in accordance with the physical, performance and other specifications and representations applicable under this Agreement.
- o For a period of time commencing on the Acceptance Date and expiring with the term of the contract, with respect to each item of equipment (machine) delivered hereunder, the Contractor agrees to repair or replace, as is necessary, any machine or part thereof which ceases to operate, in accordance with this Agreement's terms and conditions; technical specifications; or acceptance criteria. Such repair or replacement shall be performed by the Contractor at no charge to the State for such costs related to the repair as labor, replacement parts, shipping (either of the replacement parts to the State or the defective part back to the Contractor), delivery, installation, or any other cost incurred in the repair. Said repair or replacement pursuant to this clause must be at least as good, in terms of response and total repair time, as the State would have received under the Contractor's standard maintenance contract.

The warranties in this Section do not replace or diminish any warranties contained in the Contractor form portion (if any) of this Agreement, but are in addition thereto.

The Contractor shall not be liable under this Section for the failure of any equipment furnished by the Contractor under this Agreement due to the use of an attachment, feature or device that was supplied by a different manufacturer and was not approved in writing by the Contractor. The approval of the use of any such attachment, feature or device shall not be deemed a representation, warranty or understanding by the Contractor regarding the modification, including its performance in conjunction with the Contractor's equipment.

6.5.11 MOST FAVORED CUSTOMER

During the life of this Agreement all prices or rates charged by the Contractor shall be computed using the lower of:

- o the Contractor's proposed Pricing Schedules or rates; or
- o the lowest price or rate charged by the Contractor, for the same or lower volume, under any contract entered into with any of its customers located in Oklahoma.

This provision shall not apply to:

- o sales made by the Contractor for resale;
- o sales to educational institutions;
- o transfers which are deemed to be charitable contributions;
- o sales to customers other than the State which orders include substantial software and/or services when the State orders include hardware equipment only;
- o sales to customers under contracts by which the customer guarantees to purchase a specific minimum volume of goods and/or services **or** commits to a minimum dollar value of purchases **and** under which the customer, if it fails to acquire the required volume of goods and/or services **or** minimum dollar amount, pays no less for the goods and/or services actually acquired than the State would pay for the same goods and/or services;
- o sales made under discount provisions which accord a more favorable discount for purchases made in bulk shipment quantities, where the State purchases are not made in the bulk shipment quantities which establish the more favorable discount; or
- o sales made under contracts whose duration is significantly shorter than the contract period specified by the State. If the duration

differs from the State's requirements by twelve percent (12%) or more, it shall be considered to be significantly different duration to make this clause effective.

6.5.12 INFRINGEMENT PROTECTION

The Contractor represents that to the best of its knowledge neither the equipment nor software provided pursuant to this Agreement, nor the use thereof, violates or infringes upon any patent, copyright, or any other right of a third party. In the event of any action brought against the State in which infringement of a U.S. patent or copyright is claimed, the Contractor will defend or settle the claim at its own expense, and indemnify the State against any expenses, costs or damages incurred by the State on account of such claim, but such defense, settlement and payment are conditioned on the following:

- o the Contractor is notified of any claim promptly after the State becomes aware of it; and
- o the State gives the Contractor information reasonably available and assistance reasonably necessary to facilitate the settlement or defense of such claim and, to the extent permitted by law, the State makes any defenses available to it available to the Contractor.

In such event, the Contractor shall have the right to disapprove any negotiated settlement.

In the event such a claim occurs, or, in the Contractor's opinion is likely to occur, the Contractor will, at its option and expense, either procure for the State the right to continue using the equipment and software, or replace or modify the same so that they become non-infringing. If, despite the reasonable efforts of the Contractor, neither alternative is feasible, the Contractor will accept return of the infringing products, without charge or penalty for premature termination of any lease or rental. If such products were purchased or licensed in perpetuity, the Contractor will grant the State a credit equal to the price paid by the State reduced by depreciation to the date of return calculated by straight line method over an assumed five-year (5) life with no residual value.

The Contractor shall not indemnify the State against any claim of infringement arising out of equipment, software or modifications, not supplied by the Contractor. No limitation of liability provision of this Agreement shall apply to the indemnification provided by this Section.

6.5.13 HOLD HARMLESS

The Contractor shall indemnify, defend, protect, and hold harmless the Authority, the State of Oklahoma, and any of its employees from:

- o any claims for damages or losses arising from services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract;
- o any claims for damages or losses to any person or firm injured or damaged by erroneous or negligent acts, including disregard of State or Federal Medicaid regulations or legal statutes, by the Contractor, its officers, employees, or subcontractors in the performance of the contract;
- o any claims for damages or losses resulting to any person or firm injured or damaged by the Contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract or by Federal or State regulations or statutes;
- o any failure of the Contractor, its officers, employees, or subcontractors to observe the laws of the State of Oklahoma, including, but not limited to, labor laws and minimum wage laws;
- o any claims for damages, losses, or costs associated with legal expenses, including, but not limited to, those incurred by or on behalf of the State in connection with the defense of claims for such injuries, losses, claims, or damages specified above.

Before delivering services under this contract, the Contractor shall provide adequate demonstration to the State that insurance protection necessary to address each of these risk areas are in place. A copy of the contractor's workers' compensation insurance policy shall be filed with OHCA Contract Administrator upon notification of award of Contract. Minimum requirements for coverage are defined in ITB Subsection 6.5.14.1. A copy of the contractor's workers' compensation insurance policy shall be filed with OHCA Re-procurement manager upon notification of award of Contract.

The Contractor may elect to self-insure any portion of the risk assumed under the provision of this contract based upon the Contractor's ability (size and financial reserves included) to survive a series of adverse financial actions, including withholding of payment by the State or imposition of damages by OHCA.

6.5.14 LIABILITY

The Contractor agrees to indemnify the Authority or the State of Oklahoma for any losses the Authority or the State of Oklahoma may sustain when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers, agents, employees or subcontractors.

The Contractor may insure any portion of the risk assumed under the provision of the Contract based upon its ability to survive a series of adverse experiences, including

withholding of payment by the State of Oklahoma, or imposition of penalties by the State of Oklahoma. Before delivery of services, the Contractor must obtain from an insurance company duly authorized to do business in Oklahoma, and provide to the State of Oklahoma current certificates of the following:

- o workers' compensation,
- o comprehensive liability insurance, and
- o property damage insurance.

The Contractor shall be in compliance with the insurance laws of the State of Oklahoma and the Federal government for the term of the contract.

6.5.14.1 Workers' Compensation

The contractor shall take out and maintain, during the life of this Contract, workers' compensation insurance for all of its employees employed in Oklahoma; and in the event any work is subcontracted, the contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees employed at any site in Oklahoma, unless such subcontractor employees are covered by the workers' compensation protection afforded by the contractor.

6.5.14.2 General Liability and Property Damage Insurance

The Contractor shall obtain, pay for, and keep in force the following minimum insurance: Premises-Operations, Independent Contractors' Protective, Products and Completed Operations, Personal Injury Liability, and Automotive Liability. The policy(ies) shall be on an occurrence form, and limits shall be not less than one million dollars (\$1,000,000.00) each, per occurrence, general aggregate, and products/completed products aggregate; fifty thousand dollars (\$50,000.00) fire/legal liability; and one million dollars (\$1,000,000.00) automotive combined single limit. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums to protect the interests of the State.

The Contractor shall furnish the OHCA Re-procurement Manager with a certificate(s) evidencing that such insurance is in effect, for what amounts, and applicable policy numbers and expiration dates prior to start of work under the contract. In the event of cancellation of any insurance coverage, the Contractor shall immediately notify the State of such cancellation. The Contractor shall provide OHCA with written notice at least ten (10) calendar days prior to any change in the insurance required under this Subsection.

The Contractor shall also require that each of its subcontractors maintain insurance coverage as specified above or provide coverage for each subcontractor's liability and employees. The provisions of this clause shall not be deemed to limit the liability or responsibility of the Contractor or any of its subcontractors hereunder.

6.5.15 FORCE MAJEURE

Neither the Contractor nor the State shall be liable for any damages or excess costs for failure to perform their contract responsibilities if such failure arises from causes beyond the reasonable control and without fault or negligence by the Contractor or the State. Such causes may include, but are not restricted to, fires, earthquakes, tornadoes, floods, unusually severe weather, or other catastrophic natural events or acts of God; epidemics; explosions; acts of any governmental body acting in either its sovereign or contractual capacity; strikes by other than the Contractor's employees; and freight embargoes. In all cases, the failure to perform must be beyond the reasonable control of, and without fault or negligence of, either party.

Within seventy-two (72) hours of the occurrence of such an event, the Contractor shall initiate disaster recovery and/or back-up procedures to provide alternate services. During such period, the Contractor shall be responsible for all costs and expenses related to provision of the alternate services. The Contractor shall notify the OHCA Contract Administrator prior to initiation of alternate services as to the extent of the disaster and/or emergency and the expected duration of alternate services within twenty-four (24) hours of onset of the problem.

6.5.16 PATENT OR COPYRIGHT INFRINGEMENT

The Contractor represents that, to the best of its knowledge, none of the software to be used, developed, or provided pursuant to this contract violates or infringes upon any patent, copyright, or any other right of a third party. If any claim or suit is brought against OHCA or the State for the infringement of such patents or copyrights arising from the Contractor's or the State's use of any equipment, materials, computer software and products, or information prepared for, or developed in connection with performance of, this contract, then the Contractor shall, at its expense, defend such use. The Contractor shall satisfy any final award for such infringement, whether it is resolved by settlement or judgment involving such a claim or suit.

The State shall give the Contractor prompt written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation. If principles of governmental or public law are involved, the State may participate in the defense of any such action. No Contractor costs or expenses shall be incurred by the State without the Contractor's written consent.

If, in the Contractor's opinion, equipment, materials, software, and products or information used in this contract are likely to or do become the subject of a claim of infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the State's consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's option and expense, obtain the right for the State to continue the use of such equipment, materials, and information. In the event of equipment and/or software substitution, the State must protect its interests in data used by such equipment or software through recovery or conversion of such data to other approved equipment or software. The Contractor shall, in any such suit, satisfy any damages for infringement

assessed against the State or its Authorities, officers, employees, or agents resulting from said lawsuit, whether it is resolved by settlement or judgment.

6.5.17 PURCHASING ACTIVITY

The Contractor's or subcontractor's purchases of supplies, equipment, services, etc. must be accomplished in accordance with all applicable federal and state laws and the regulations promulgated thereunder. The Authority, acting through the OHCA Re-procurement Manager, reserves the right to require the Contractor to use small business and/or minority Contractors in accordance with the State of Oklahoma's Small Business Set-Aside Program.

6.5.18 QUALIFICATION TO DO BUSINESS

The Contractor shall, within thirty (30) days after receiving a letter of intent to award the contract, provide written assurance to the Authority from its legal counsel that the Contractor is qualified to do business in Oklahoma and is not prohibited by its articles or incorporation, by laws, or the law under which it is incorporated from performing the services required under this contract.

6.5.19 WARRANTY AGAINST BROKER'S FEE

The Contractor warrants that no person or selling agency has been employed, engaged, or retained to solicit or secure this contract or any advantage hereunder upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee or in exchange for any substantial consideration bargained for, excepting that which is provided to the Contractor's bona fide employees, or to bona fide professional, commercial, or selling agencies, or in the exercise of reasonable diligence should have been known by the State to be maintained by the Contractor for the purpose of securing business for the Contractor. In the event the Contractor is in breach or violation of this warranty, the State shall have the right at its option to annul this contract without liability, and to deduct from the charges otherwise payable by the State under this contract the full amount of such commission, percentage, brokerage, or contingent fee, or to pursue any other remedy available to the State under this contract, at law, or in equity.

6.5.20 STATE PROPERTY

The Contractor shall be responsible for the proper custody and care of any State-owned property furnished for the Contractor's use in connection with the performance of this contract, and the Contractor will reimburse the State for its loss or damage, normal wear and tear excepted.

6.6 PERSONNEL

The following Subsections detail provisions regarding Contractor and State personnel.

6.6.1 EMPLOYMENT PRACTICES

During the term of this agreement, the contractor shall not discriminate against employees or applicants for employment because of race, marital status, ancestry, arrest

record or conviction, physical condition, developmental disability, sexual orientation, color, religion, creed, age, sex, handicap, or national origin. In furtherance of that nondiscrimination, the contractor shall:

- o take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, marital status, ancestry, arrest record or conviction, physical condition, developmental disability, color, religion, creed, age, sex, handicap, or national origin. Such action shall be taken in conjunction with any of the contractor's acts in the capacity of an employer, including, but not limited to, employment of individuals; upgrading; demotions; transfers; recruitment; recruitment advertising; layoffs; terminations; changes in rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities;
- o post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and
- o state, in all solicitations or advertisements for employees, that all qualified applicants will receive consideration for employment without regard to race, marital status, ancestry, arrest record or conviction, physical condition, developmental disability, sexual orientation, color, religion, creed, age, sex, handicap, or national origin.

Without limiting the generality of any other provision of this Agreement, if this Agreement is funded in any part by monies of the United States, the contractor shall:

- o comply with all of the provisions of Executive Order No. 11246, entitled "Equal Employment Opportunity" as supplemented in U.S. Department of Labor regulations (41 CFR Part 60) and with any rules, regulations, and guidelines as the State of Oklahoma or the United States shall issue to implement these regulations; and
- o keep all such information, records, and reports as may be required by State law and regulation and by rules and regulations or orders of the United States, and furnish or submit the same at such times as may be required. The contractor shall also permit OHCA, the United States, or any of their designated representatives to have access to any of the contractor's books, records, and accounts for the purpose of investigation to ascertain compliance with the aforesaid rules, regulations, and orders, and the covenants and conditions herein contained.

The contractor agrees to the provisions as stated below:

- o In connection with the performance of work under this Contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, marital status, creed, ancestry, arrest record or conviction record, physical condition, developmental disability as defined in s. 51.01(5), sexual orientation, or national origin. This provision shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause;
- o the contractor shall cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that the provisions will be binding on each subcontractor; provided, however, that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials. The contractor shall take such action with respect to any subcontract as OHCA, or, where applicable, the United States, may direct as a means of enforcing such provisions, including sanctions for noncompliance;
- o the contractor shall submit the Affirmative Action (AA) plan to OHCA within fifteen (15) calendar days of signing the Contract and each subsequent Contract year;
- o the contractor certifies that it will not discriminate against any employee or applicant for employment because of a physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. As a contractor, it agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment; upgrading demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship;
- o the contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to Section 503 of the Rehabilitation Act of 1973, as amended.
- o The contractor certifies no discrimination against any employee or applicant for employment because that person is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant

for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veteran status in employment practices such as the following: employment; upgrading, demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans Readjustment Act of 1974, Public Law 93-509.

6.6.2 EMPLOYMENT OF STATE PERSONNEL

The contractor shall not knowingly engage on a full-time, part-time, or other basis, during the period of the Contract, any professional or technical personnel who are, or have been at any time during the period of this Contract, State employees except those regularly retired individuals, without prior written approval from the MMIS Re-procurement Manager or Contract Administrator. Recently retired (within one [1] year) DHS or OHCA employees shall not knowingly be engaged for performance of this Contract on a full-time, part-time, or other basis, without prior written approval from the CEO, OHCA.

6.6.3 INDEPENDENT CAPACITY OF CONTRACTOR

The contractor agrees that its officers, employees, subcontractors, or any other agent of the contractor in performance of this Agreement shall not act as or represent themselves to be officers, employees, or agents of the Oklahoma Health Care Authority or the State of Oklahoma.

6.6.4 KEY PERSONNEL

The services of each individual named in the Contractor's proposal shall be required unless that individual becomes unavailable to the Contractor only for reasons such as the individual's death, disability, or termination of the underlying employment relationship. Staffing will include named individuals at the level of effort proposed.

If an individual named in this Subsection becomes unavailable for such reasons, the Contractor, within ten (10) business days of said individual's notice, shall give the MMIS Re-procurement Manager or Contract Administrator the resume of a proposed replacement, and offer the Authority an opportunity to interview that person. If the MMIS Re-procurement Manager or Contract Administrator is not reasonably satisfied that the proposed replacement has comparable ability and experience, he shall so notify the Contractor within ten (10) business days after receiving the resume and completing any interview. Once that has occurred, the Contractor shall propose another replacement and the MMIS Re-procurement Manager or Contract Administrator shall have the same right of approval. Such process shall be repeated until a proposed replacement shall be approved by the MMIS Re-procurement Manager or Contract Administrator. If after thirty (30) calendar days from said individual's notice, a qualified replacement is not approved, damages may be imposed.

The Authority shall have the right to require the Contractor to remove any individual (whether or not named in this Subsection) from his assignment to this Agreement by the Contractor or any subcontractor, if, in the opinion of the Authority, such employee is uncooperative, inept, incompetent or otherwise unacceptable. In the event that an employee is removed pursuant to a written request from the OHCA Contract Administrator, the replacement provisions above shall apply.

Key personnel title for the Development and Implementation Task are:

- o Project Manager/Account Manager,
- o Implementation Task Manager,
- o Conversion Task Manager, and
- o Implementation/Claims Processing Manager.

Key personnel for the Operations and Maintenance and Modifications Task are:

- o Project Manager/Account Manager;
- o Operations/Claims Processing Manager;
- o Modifications Task Manager;
- o Program Services Manager;
- o Systems Analysts, six (6);
- o Reporting Specialist; and
- o Provider Relations Manager.

Temporary or permanent transfer of any of the above named Key Contractor Personnel within the Oklahoma MMIS Project or temporary or permanent transfer of any of the above named Key Contractor Personnel between Contractor Projects shall require prior written approval of the Authority's MMIS Project Manager or Contract Administrator, which shall not be unreasonably withheld.

6.6.5 TERMINATION OF PERSONNEL

The MMIS Re-Procurement Project Manager or Contract Administrator shall monitor the Contractor's efforts and account for all work to be performed by Contractor personnel. He/she shall determine whether Contractor personnel are performing satisfactorily at the appropriate skill levels specified in the ITB, the Contractor's Proposal, and the approved Work Plan.

The Contractor shall not alter the numbers and distribution of MMIS staff as bid in its proposal without the prior written approval of the Authority's MMIS Re-procurement Project Manager or Contract Administrator, which shall not be unreasonably withheld.

The MMIS Re-Procurement Project Manager or Contract Administrator may require the Contractor to relieve any of the Contractor's personnel from any further work under this Agreement if in his/her sole opinion:

- o the individual does not perform at the applicable skill level specified in the ITB, the Contractor's proposal, and the approved Work Plan;
- o the individual does not deliver work which conforms to the performance standards stated in the ITB, the Contractor's proposal, and the approved Work Plan; or
- o personality conflicts with Authority personnel hinder effective progress on the work of the project or unit to which the individual is assigned.

The Contractor's Project Manager shall immediately notify the MMIS Re-Procurement Project Manager or Contract Administrator of the resignation or discharge of any Contractor personnel assigned to this Agreement, and such personnel shall be forthwith relieved of any further work under this Agreement.

6.6.6 REPLACEMENT OF TERMINATED PERSONNEL

If the MMIS Re-procurement Manager or Contract Administrator notifies the Contractor that a replacement is required for a Contractor employee who has been relieved from work under this agreement, the Contractor Project Manager shall deliver to the MMIS Re-procurement Manager resumes of at least two (2) candidates for each position specified in the notice, within five (5) business days after receipt of notice.

Within three (3) business days after receipt of the resumes of proposed replacement candidates, the MMIS Re-procurement Manager or Contract Administrator shall contact the Contractor Project Manager to state which, if any, of the proposed candidates have been rejected upon review of their resumes, and they shall schedule interviews with the others. The MMIS Re-procurement Manager or Contract Administrator may reject any candidate for whom the Project Manager is unable to schedule an interview within three (3) business days following the contact, and may reject any candidate following his interview. If the MMIS Re-procurement Manager or Contract Administrator requires it, the Contractor Project Manager shall submit resumes of an additional replacement candidate for each rejected candidate. The MMIS Re-procurement Manager or Contract Administrator shall complete the selection of candidates within two (2) business days after the final candidate interview. Upon completion of candidate selection, the MMIS Re-procurement Manager or Contract Administrator and the Contractor Project Manager shall schedule the start dates of the selected candidates, which shall not be later than ten (10) business days after the selection. The above timeframes shall be adhered to unless a longer period of time is agreed to by both parties.

6.7 CONSEQUENTIAL DAMAGES - FAILURE TO MEET CONTRACT REQUIREMENTS

The contractor shall, at all times, comply with all system and operational performance requirements and expectations specified in this ITB, with Part 11 of the State Medicaid Manual, and with all related Action Transmittals (AT) and Information Memoranda (IM), as well as any modifications or changes thereto, and any changes to CFR 42, 45, and 95 as they refer to the MMIS and its operations and the use of contractor services.

Notwithstanding anything to the contrary in this Agreement, the contractor warrants that the enhanced Oklahoma MMIS shall meet all requirements of this ITB, shall be fully operational by July 1, 2002, and will meet all HCFA requirements for OHCA to claim the maximum allowable Federal financial participation from July 1, 2002 through the end of the contract term. The contractor further warrants that it shall meet all performance requirements listed below during the term of this Agreement.

The contractor shall, at all times, operate the MMIS and its activities in conformity with the policies and procedures of the Oklahoma Medicaid program. All requirements described in the ITB are subject to monitoring by OHCA, or its designee. OHCA reserves the right to monitor performance and may exercise such option, at its discretion, without notice. In the event of a failure to meet the performance requirements, the contractor agrees that OHCA may assess and withhold from payments due its actual damages for the losses set forth in Subsection 6.7 and liquidated damages for losses defined in Subsection 6.8, at OHCA's discretion.

Failure of the contractor to meet these performance requirements in a timely and accurate manner could impede OHCA in meeting its obligation to Oklahoma citizens and health care providers and increase the cost of meeting those obligations.

OHCA agrees that the amounts stated for each occurrence of such performance failure define the maximum damages due from the contractor and that OHCA shall adjust the amount downward to eliminate any proportion of the damage caused by the State's failure to meet its contractual responsibility.

If OHCA elects to not exercise a damage clause in a particular instance, this decision shall not be construed as a waiver of the State's right to pursue associated damages for failure to meet that performance requirement in the future.

It is expressly agreed by OHCA and the Contractor that, in the event of a failure to meet the performance requirements listed below, damage shall be sustained by the State, and the Contractor shall pay to the State its actual damages according to the following Subsections. Written notice of said failure to perform shall be provided to the Contractor within thirty (30) calendar days of the State's discovery of such failure.

6.7.1 SYSTEM CERTIFICATION - PERFORMANCE REQUIREMENT

Section 1903(a)(b)(d) of Title XIX provides seventy-five percent (75%) Federal financial participation (FFP) for operation of mechanized claims payment and information retrieval systems approved by HCFA. Up to ninety percent (90%) FFP is available for MMIS-related development costs prior approved by HCFA in the State's APD and at contract signing. The planned Oklahoma MMIS **must**, throughout the contract period, meet all certification and recertification requirements established by HCFA.

The Contractor shall ensure that Federal certification approval for the maximum allowable enhanced FFP for the planned Oklahoma MMIS is obtained retroactively to the day the system becomes operational and is maintained throughout the term of the contract. Should de-certification of the MMIS, or any component part of it, occur prior to contract termination or the ending date of any subsequent contract extension, the Contractor shall be liable for resulting damages.

6.7.2 SYSTEM CERTIFICATION - DAMAGES

The Contractor shall be liable for the difference between the maximum allowable enhanced Federal financial participation and that actually received by OHCA, including any losses due to loss of certification, failure to obtain approval retroactive to day one (1), or delays in readiness to support certification.

All FFP penalty claims assessed by HCFA shall be withheld from monies payable to the Contractor until all such damages are satisfied. Damage assessments shall not be made by the State until HCFA has completed its certification approval process and notified the State of its decision in writing.

6.7.3 DHHS SANCTIONS - PERFORMANCE REQUIREMENT

The Contractor must perform all of its functions according to the terms required by the State Medicaid Manual, Part 11.

6.7.4 DHHS SANCTIONS - CONSEQUENTIAL DAMAGES

If during either MMIS Development and Implementation or Operations Tasks, HCFA, imposes fiscal sanctions against the State as a result of the Contractor's or any subcontractor's action or inaction, the Contractor shall compensate the Authority the amount lost by the State by application of the sanctions.

6.7.5 CORRECTNESS OF PAYMENTS - PERFORMANCE REQUIREMENT

All payments, adjustments, and other financial transactions made through the MMIS must be made on behalf of eligible clients, to enrolled providers, for approved services, and in accordance with the payment rules and other policies of the State of Oklahoma.

The Contractor shall be liable for the actual amount of any detected overpayments or duplicate payments identified as a result of State or Federal claims reviews or as reported by providers or from other referrals, which are a result of incorrect Contractor staff action or inaccurate system data and processing. Such liabilities will be withheld from Contractor payments. However, the Contractor may seek recovery, on behalf of the State, from providers to whom erroneous payments are made, utilizing voluntary refund, offset recovery, or other State-approved methods.

The Contractor shall notify the State immediately upon discovery of any overpayments or duplicate payments, irrespective of cause, and prior to initiating appropriate recovery action. The Contractor shall notify the State, using the change request process, of any system errors that result in a potential provider overpayment.

6.7.6 CORRECTNESS OF PAYMENTS - DAMAGES

If an overpayment or duplicate payment is made to a provider and that payment is the result of a failure of the Contractor to either utilize available information or to process correctly, then the Contractor shall be liable for the overpayment or duplicate payment for which full recovery cannot be made, using all reasonable procedures. The Contractor shall notify the State immediately upon discovery of any overpayments or duplicate payments, irrespective of cause.

The Contractor shall pay to the State any portion of an erroneous payment not recouped within one hundred eighty (180) calendar days of its receipt of the direction initiating its recoupment. In addition to the amount of the erroneous payment, the Contractor shall be liable for interest payments at the prevailing Prime rate beginning from the date of erroneous payment through the date of payment to the State. The Contractor shall make such payment to the State within seven (7) calendar days of the expiration of the one hundred eighty (180) calendar day period.

The State shall not be liable to the Contractor for any erroneous payment due which is not recovered by recoupment from providers. The Contractor may only initiate independent recovery procedures and actions with the prior written approval of the State Contract Administrator once the recoupment process described herein has been completed and a repayment amount remains outstanding. If the State recovers any erroneous payments for which the Contractor has reimbursed the State, the State Contract Administrator shall notify the Contractor who shall then submit a standard State invoice for the returned amount, less expenses incurred by the State during the recovery process.

6.7.7 OPERATIONAL START DATE - PERFORMANCE REQUIREMENTS

It is the State's intent to have the planned Oklahoma MMIS fully operational on July 1, 2002. Fully operational means to begin processing correctly all claim types, claims adjustments, and other financial transactions; maintaining all system files; producing all required reports; and performing all other Contractor responsibilities

specified in this ITB for the base MMIS and any optional enhancements selected by the State for July 1, 2002.

Compliance with the July 1, 2002 date is critical to the State's interest. Therefore, the Contractor shall be liable for resulting damages if this date is not met. The Contractor's capability to meet this date shall be determined by the State following the conclusion of the operational readiness test.

6.7.8 OPERATIONAL START DATE - DAMAGES

If, for any reason, the Contractor does not fully meet the operational start date approved in the Detailed Work Plan and a contract amendment delaying this date or start-up of a portion of the processing requirements has not been approved, then the Contractor shall be liable for all costs incurred by the State to continue current MMIS and Contractor operations. The Contractor shall also forfeit all claims to reimbursement of monthly expenses or operational payments for that month and each month thereafter until the State approves operational readiness.

6.7.9 RECOVERY

If, in the reasonable judgment of the Authority, a default by the Contractor is not so substantial as to require termination and reasonable efforts to induce the Contractor to cure the default are unavailing, and the default is capable of being cured by the Authority or by another resource without unduly interfering with continued performance by the Contractor, the Authority may provide or procure the services reasonably necessary to cure the default, in which event the Contractor shall reimburse the Authority for the reasonable cost of the services.

In addition, the Contractor must cooperate with these resources in allowing access to the computer facility, documentation, software, utilities and equipment. The Contractor shall remain liable for all system performance criteria, maintenance of and further enhancements to any applications developed by these resources to the extent that it constitutes the Contractor's work product whether impacted by the work of the other resource or not.

6.8 LIQUIDATED DAMAGES - FAILURE TO MEET PERFORMANCE REQUIREMENTS

The purpose of liquidated damages is to ensure adherence to the performance requirements in this Agreement. No punitive intent is inherent. It is agreed by the State and the contractor that, in the event of a failure to meet a performance requirement listed below, damage shall be sustained by the State and that it is, and will be, impractical and extremely difficult to ascertain and determine the actual damages that the State will sustain in the event of, and by reason of, such failure; and it is therefore agreed that the contractor will be fiscally liable to OHCA for such failures at the sole discretion of OHCA according to the provisions defined below.

Written notification of each failure to meet a performance requirement will be issued by the MMIS Re-procurement Manager or Contract Administrator to the contractor. The contractor shall have five (5) business days from the date of receipt of written notification of a failure to perform to specifications to cure the failure or, if it is evident that the cure cannot be performed within the five (5) business days, the MMIS Re-procurement Manager or Contract Administrator can approve additional days as deemed necessary. If the failure is not resolved within this warning/cure time period, liquidated damages may be imposed retroactively to the date of failure to perform. The imposition of liquidated damages is not in lieu of any other remedy available to OHCA.

If OHCA elects not to exercise a damage clause in a particular instance, this decision shall not be construed as a waiver of the State's right to pursue future assessment of that performance requirement and associated damages.

6.8.1 PERFORMANCE REQUIREMENTS FOR SYSTEM IMPLEMENTATION AND OPERATIONS

The following performance requirements and damage clauses related to satisfactory completion of Development and Implementation Task activities have been defined by OHCA:

- o Systems documentation, and
- o Deliverables.

6.8.1.1 Systems documentation - Performance Requirement

The contractor is responsible for providing to the State complete, accurate, and timely documentation of the operational MMIS installed and all enhancements made to it. Such documentation must be according to the specifications approved by OHCA. Four (4) copies and an electronic version (e.g., CD-ROM or other media as determined by the State) of such documentation must be provided to OHCA in final form within thirty (30) days of the date of start of operations for all MMIS subsystems approved by OHCA. The contractor will also be responsible for providing those copies required by the U.S. Department of Health and Human Services.

Any changes that occur to the operational system must be documented according to the standards approved by OHCA, and documentation of those changes must be provided to OHCA within thirty (30) days of OHCA approval of implementation of the change.

6.8.1.2 Systems Documentation - Damages

One hundred dollars (\$100.00) for each work day, or any part thereof, from the date documentation was due until the date it is provided and found acceptable as to format and completeness of contents, based on ITB requirements, the State Medicaid Manual, and OHCA review.

6.8.1.3 Deliverables - Performance Requirement

Copies of each deliverable, as defined in the approved Detailed Implementation Schedule (DIS), must be delivered to OHCA in final form, in the number specified, and on the date specified in the DIS. OHCA requires up to ten (10) paper copies and an electronic copy of all deliverables. The electronic copy must be compatible with MS Word or other application software as requested by OHCA and submitted on State-specified media. All software development deliverables must be in a format approved by OHCA and meet content requirements specified or as subsequently defined by OHCA.

6.8.1.4 Deliverables - Damages

One hundred dollars (\$100.00) for each work day that a deliverable is late, includes less than the required copies, or is delivered on incorrect media. An additional one hundred dollars (\$100.00) for each work day following the cure period that a deliverable continues to not meet minimum content requirements or follow the approved format after its formal rejection by OHCA.

6.8.2 PERFORMANCE REQUIREMENTS FOR SYSTEM IMPLEMENTATION

The following performance requirements and damage clauses related to satisfactory completion of Development and Implementation Task activities have been defined by OHCA:

- o Key dates, and
- o Key personnel.

6.8.2.1 Key Dates - Performance Requirement

It is the State's intent to have the new MMIS developed, tested, and installed by July 1, 2002. Accomplishment of certain specified development activities by the key dates, as defined in ITB Subsection 3.5, and established in the detailed work plan is necessary to ensure full compliance with that start date.

If, for any reason, the Contractor is delayed in meeting these key dates and a contract amendment or modification to the work plan is not approved, damages may be assessed. Approval of a contract amendment or work plan modification does not summarily imply that damages will not be assessed.

6.8.2.2 Key Dates - Damages

Up to five hundred dollars (\$500.00) damages per work day, or any part thereof, may be assessed for each of the first ten (10) calendar days of delay in meeting a key date. Up to one thousand dollars (\$1,000.00) damages per work day, or any part thereof, may be assessed for each of the next thirty (30) calendar days of delay, up to two thousand dollars (\$2,000.00) damages per work day, or any part thereof, for each additional day of delay after that. These damages shall be in addition to any amounts assessed for delays in obtaining Federal certification and/or meeting the operational start date.

6.8.2.3 Key Personnel - Performance Requirement

Personnel commitments made in the Contractor's proposal for the Development and Implementation Task activities shall not be changed without prior written approval of the OHCA Contract Administrator, unless due to the resignation or death of any named individual. Staffing will include the following named individuals at the levels of effort proposed or as specified in the contract:

- o Project/Account Manager,
- o Implementation/Claims Processing Manager,
- o Implementation Task Manager, and
- o Conversion Task Manager.

Personnel commitments made in the Contractor's proposal for the Operations and Maintenance and Modifications Task activities shall not be changed without prior written approval of the OHCA Contract Administrator, unless due to the resignation or death of any named individual. Staffing will include the following named individuals at the levels of effort proposed or as specified in the contract:

- o Project/Account Manager;
- o Operations/Claims Processing Manager;
- o Modifications Task Manager;
- o Program Services Manager;
- o System Analysts, eight (8);
- o Reporting Specialist; and
- o Provider Relations Manager.

The State shall approve in advance, in writing, any permanent or temporary changes to or deletion from the Contractor's named management, supervisory, and key professional personnel.

6.8.2.4 Key Personnel - Damages

Up to a maximum of five thousand dollars (\$5,000.00) damages per occurrence may be assessed for each key person proposed who is changed for reasons other than death or disability or resignation or termination or military recall and up to an additional two hundred dollars (\$200.00) per work day damages may be assessed for each work day after the initial thirty (30) calendar days allowed in ITB Subsection 6.6.4 that an acceptable replacement for that position is not provided.

6.8.3 PERFORMANCE REQUIREMENTS FOR OPERATIONAL RESPONSIBILITIES

The following performance requirements and damages relate to critical Contractor responsibilities during MMIS operations. Requirements and damages are defined for the following performance criteria:

- o Timeliness of claims processing,
- o System availability and response time,
- o Minimum file update processing cycles,
- o Timeliness and accuracy of report production,
- o MMIS recipient eligibility reporting file update processes,
- o Eligibility Verification and Provider Inquiry System and Prospective Drug Utilization Review/Electronic Claims Management availability,
- o System maintenance and modification,
- o Disaster Recovery and Periodic Testing,
- o Compliance with other material contract provisions, and
- o Timelines of Warrant File.

6.8.3.1 Timeliness of Claims Processing - Performance Requirement

The Contractor shall meet the following claims processing timeliness standards.

- o Ninety percent (90%) of all clean claims must be adjudicated for payment or denial within twenty-four (24) calendar days of receipt in the Contractor's mailroom.
- o Ninety-nine percent (99%) of all clean claims must be adjudicated for payment or denial within eighty-four (84) calendar days of receipt in the Contractor's mailroom.
- o Non-clean claims must be adjudicated within twenty-four (24) calendar days of the date of correction of the condition that caused the claim to be unclean.
- o All claims must be adjudicated within 12 months of receipt in the Contractor's mailroom, except for those exempted from this requirement by federal timely claims processing regulations.
- o All nursing home claims must be processed in the next claim cycle after receipt.
- o All provider-initiated adjustments must be processed to payment or denial within forty-five (45) calendar days of receipt in the Contractor's mailroom.

- o All checks must be mailed within forty-eight (48) hours of receipt of said checks by the Contractor from the State.
- o All notifications of payment denial must be mailed by the Contractor within thirty (30) calendar days of receipt of the claim in the Contractor's mailroom.

Those circumstances when claim resolution is being handled directly by State staff in accordance with State guidelines or held by the Contractor under State written directive shall not be counted in the calendar days threshold.

6.8.3.2 Timeliness of Claims Processing - Damages

Ten thousand dollars (\$10,000.00) may be assessed for the first month of each failure to meet the above requirements. Twenty thousand dollars (\$20,000.00) may be assessed for each consecutive subsequent month a requirement remains unmet. For example, failure to meet the above requirements for four (4) consecutive months could result in an assessment of damages of seventy thousand dollars (\$70,000.00).

6.8.3.3 System Availability and Response Time - Performance Requirement

Where on-line access to the system is specified, the Contractor must ensure that the average response time is no greater than the requirements set forth in ITB Subsection 3.1.3.2, and 9:00 p.m., Central Time, Monday through Saturday for workstations and 24 hours a day, 7 days a week except for agreed upon downtime for updating and preventive maintenance for Prospective Drug Utilization Review/Electronic Claims Management. Average response time per terminal per available production hour per day shall be reported weekly. Response time is defined in ITB Subsection 3.1.3.1.

The Contractor must ensure that on-line access to all MMIS applications is available for all State users between the hours of 7:00 a.m to 9:00 p.m., Central Time, Monday through Saturday. An application is considered unavailable when a user does not get the complete, correct full-screen response to an input transaction within ten (10) seconds after depressing the "Enter" or other function key. The State will notify the Contractor when it has been determined that the system is unavailable. The Contractor will provide monthly reports showing system availability and unavailability by number of minutes per hour of the day. Cumulative system downtime must not exceed five (5) hours per workstation or for the Prospective Drug Utilization Review/Electronic Claims Management (Pro-DUR/ECM) system during any continuous five (5) day period.

The Contractor shall provide access to the on-line system during off hours and on weekends at no extra charge whenever requested by OHCA at least forty-eight (48) hours in advance.

Performance requirements for the availability of the Eligibility Verification and Provider Inquiry System and Pro-DUR/ECM are in ITB Subsection 6.8.3.10.

6.8.3.4 System Availability and Response Time - Damages

A penalty of up to one hundred dollars (\$100.00) damages per week may be assessed for each workstation or the Pro-DUR/ECM down in excess of five (5) hours during a continuous five (5) day period. A penalty of up to one hundred dollars (\$100.00) damages per day may be assessed for each day that the response time report demonstrates that the average response is greater than the specified time. Each terminal or Prospective Drug Utilization Review/Electronic Claims Management must be available ninety percent (90%) of the available production hours in a week.

6.8.3.5 Minimum File Update Processing Cycles - Performance Requirement

The Contractor shall provide the following minimum number of file update and claims processing cycles under this contract:

- o one (1) edit/pricing cycles per week,
- o one (1) audit (history) cycles per week,
- o one (1) payment cycle bi-weekly,
- o on-line, real-time entry of data of the Provider and designated Reference Files with nightly processing of updates,
- o tape update pricing changes to the drug file at least twice monthly, and
- o adjustments and recoupments keyed in for automated processing within ten (10) calendar days of receipt.

These requirements will also be reviewed for the quality of the data input and data entry keying accuracy standards of ninety-seven percent (97%), as determined by State reviews.

Unless otherwise specified in Section 3, each file update process must be completed and the file available on-line by 7:00 a.m. Central time on the morning following scheduled update and maintenance.

6.8.3.6 Minimum File Update Processing Cycles - Damages

Up to two hundred fifty dollars (\$250.00) per hour damages may be assessed for each hour of delay in completing the file update process for system master files by 7:00 a.m. Central time of the next morning. Up to five thousand dollars (\$5,000.00) per incident may be claimed as damages for any weekly payment cycle or daily adjudication cycle that is not completed by 7:00 a.m. Central time of the next morning after its scheduled processing, unless prior written approval is authorized by the State.

6.8.3.7 Timeliness and Accuracy of Report Production - Performance Requirement

MMIS reports must be produced in the format and type of media approved by OHCA. The Contractor shall be responsible for the accuracy of all reports, including calculations and completeness of data used as input. The State shall notify the Contractor, in writing, of any inaccuracies or discrepancies.

The Contractor shall deliver each MMIS report to the personnel and the location specified by OHCA. The report distribution list, including delivery location, number of copies, and media will be defined by the State during the Development and Implementation Task. The Contractor shall be required to update and maintain the report distribution list during the Operations Task to incorporate any changes to existing reports at no additional cost to OHCA.

At a minimum, the Contractor will be required to furnish reports on the following schedule:

- o daily reports by noon of the following work day;
- o weekly reports and cycle processing reports by noon of the next working day after the scheduled run;
- o monthly reports by noon of the fifth working day after the end of the month;
- o quarterly reports by noon of the fifth day after the end of the quarter;
- o annual reports by noon of the tenth working day following the end of the year (whether Federal fiscal year, State fiscal year, waiver year, or other annual period); and
- o ad-hoc and on-request reports on the date specified in the report request.

6.8.3.8 Timeliness and Accuracy of Report Production - Damages

Up to fifty dollars (\$50.00) damages may be assessed for each business day that any MMIS report is delivered to the correct location five (5) business days after the date when it is due, or includes less than the required number of copies, or is not in the approved medium.

If a report is not corrected within ten (10) business days of the State's notice of failure to meet the reporting accuracy requirements, then up to fifty dollars (\$50.00) per day damages may be assessed for each report that has been identified as inaccurate from the date of the notification until the date the corrected report is delivered.

6.8.3.9 Eligibility Verification and Provider Inquiry System and Prospective Drug Utilization Review/Electronic Claims Management Availability – Performance Requirement

The Eligibility Verification and Provider Inquiry System and Prospective Drug Utilization Review/Electronic Claims Management systems shall be available twenty (20) hours per day, seven (7) days per week, for provider inquiry or billing purposes, as appropriate. Such availability shall include all normal forms of entry. An occurrence of system unavailability is defined as a period of four (4) hours or more of non-operation. This excludes OHCA-approved downtime for routine maintenance. Routine maintenance will be scheduled only between the hours of 1:00 a.m. Central time and 5:00 a.m. Central time and not on Saturdays.

Provide sufficient in-bound access lines so that Medicaid providers are connected with the automated eligibility inquiry system (Eligibility Verification and Provider Inquiry System) within two (2) telephone rings at least ninety-nine percent (99%) of the time; initial response must be within ten (10) seconds ninety-nine percent (99%) of the time.

The contractor shall produce a weekly report that lists the times and total hours of non-OHCA-approved non-availability and average response times for the Eligibility Verification and Provider Inquiry System and the and Prospective Drug Utilization Review/Electronic Claims Management system. OHCA shall also verbally notify the contractor when OHCA staff become aware of the system unavailability.

6.8.3.10 Eligibility Verification and Provider Inquiry System and Prospective Drug Utilization Review/Electronic Claims Management Availability - Damages

Up to five hundred dollars (\$500.00) per day may be assessed for a verified period of time when the Eligibility Verification and Provider Inquiry System or Prospective Drug Utilization Review/Electronic Claims Management were not available for provider inquiry or submission for greater than four (4) hours in a day, or the Eligibility Verification and Provider Inquiry System and Prospective Drug Utilization Review/Electronic Claims Management were not available within two (2) telephone rings at least ninety-nine percent (99%) of the time or initial response was not within ten (10) seconds ninety-nine percent (99%) of the time.

OHCA may assess damages of one thousand dollars (\$1,000.00) per occurrence of unavailability in Eligibility Verification and Provider Inquiry System or the Prospective Drug Utilization Review/Electronic Claims Management system. Total damages for Eligibility Verification and Provider Inquiry System shall not exceed ten thousand dollars (\$10,000.00) per week. Total damages for Prospective Drug Utilization Review/Electronic Claims Management shall not exceed twenty thousand dollars (\$20,000.00) per week.

6.8.3.11 System Maintenance and Modification - Performance Requirement

The Contractor must provide routine maintenance of the system at no charge to the State and not through use of the system modification change control process. The Contractor must respond in writing to notices of system problems and Change Requests issued by the State within five (5) calendar days of receipt. Within fifteen (15) calendar days, the correction must be made or a Requirements Analysis and Specifications document is due. The Contractor must correct the deficiency by an effective date to be mutually agreed upon between both parties. All system modifications shall be performed in accordance with an agreed-upon schedule.

6.8.3.12 System Maintenance and Modification - Damages

Liquidated damages as set forth in the following payment reduction factor will be assessed the Contractor for failure to meet the functions associated with the Change Request process as established by the Contractor's response to ITB Subsection 3.7, 3.8, and specified in ITB Subsection 6.4.5. The following schedules will be used to assess liquidated damages and shall be cumulative unless otherwise indicated:

- o failure to correct a system problem or complete a Change Request within the agreed upon completion date, where failure to complete was not due to the action or inaction on the part of the Authority as documented in writing by the Contractor:
 - . > 1 ≤ 30 calendar days late, two hundred and fifty dollars (\$250) per calendar day;
 - . > 30 ≤ 60 calendar days late, five hundred dollars (\$500) per calendar day; and
 - . > 60 calendar days late, one thousand (\$1,000) dollars per calendar day.

The Contractor's performance will be measured by the MMIS administrative and Change Request reports and by direct measurement by the Authority.

Payment of any liquidated damages will not relieve the Contractor from its obligation to meet the requirements established by the Contractor's response to the ITB in regard to the MMIS Maintenance and Modifications Tasks.

6.8.3.13 Disaster Recovery and Periodic Testing

Liquidated damages as set forth in the following payment reduction factor will be assessed the Contractor for not implementing its disaster recovery plan within the allotted timeframes established by the Contractor's response to ITB Subsections 3.1.1.4 and 3.5.2.4.6. The following schedule will be used to assess liquidated damages:

- o implementation of the disaster recovery plan exceeds the proposed time by ≤ 2 calendar days, five thousand dollars (\$5,000);

- o implementation of the disaster recovery plan exceeds the proposed time by $> 2 \leq 5$ calendar days, ten thousand dollars (\$10,000);
- o implementation of the disaster recovery plan exceeds the proposed time by $> 5 \leq 10$ calendar days, twenty-five thousand dollars (\$25,000);
- o implementation of the disaster recovery plan exceeds the proposed time by $> 10 \leq 21$ calendar days, fifty thousand dollars (\$50,000); and
- o implementation of the disaster recovery plan exceeds the proposed time by > 21 calendar days, One hundred thousand dollars (\$100,000).

The Contractor's performance will be measured by the ability of the backup facility(ies) to perform 100 percent of the appropriate MMIS functions as measured by Authority personnel.

Payment of any liquidated damages will not relieve the Contractor from its obligation to meet the requirements established by the Contractor's response to the ITB in regard to disaster recovery.

6.8.3.14 Compliance with Other Material Contract Provisions – Performance Requirement

The objective of this standard is to provide the State with an administrative procedure to address general contract compliance issues which are not specifically defined as performance requirements listed above, but are Contractor responsibilities contained in Section 3 of this ITB.

OHCA staff may identify contract compliance issues resulting from the Contractor's performance of its responsibilities through routine contract monitoring activities. If this occurs, OHCA will notify the Contractor in writing of the nature of the performance issue. The State will also designate a period of time in which the Contractor must provide a written response to the notification and will recommend, when appropriate, a reasonable period of time in which the Contractor should remedy the non-compliance.

6.8.3.15 Compliance with other Material Contract Provisions - Damages

If the non-compliance is not corrected by the specified date, OHCA may assess liquidated damages up to the amount of two hundred dollars (\$200.00) per working day after the due date until the non-compliance is corrected.

6.8.3.16 Timeliness of Warrant File - Requirement

The contractor shall transmit the disbursement file to the State Treasurer's Office by no later than 9:00 a.m., Central Time, following OHCA authorization, or according to any revised weekly schedules established by the State.

6.8.3.17 Timeliness of Warrant File - damages

- o Up to one thousand dollars (\$1,000.00) per hour for each hour (or fraction thereof) the file is transmitted late, up to four (4) hours.
- o Ten thousand dollars (\$10,000.00) for each transmission later than four (4) hours and for any transmission that cannot be processed due to the quality of the file transmitted.

6.9 DEDUCTION OF DAMAGES FROM PAYMENTS

Amounts due OHCA as liquidated or consequential damages may be deducted by the State from any money payable to the Contractor pursuant to this contract. The OHCA Re-procurement Manager or Contract Administrator shall notify the Contractor in writing of any claim for liquidated or consequential damages at least fifteen (15) calendar days prior to the date the State deducts such sums from money payable to the Contractor. Such amounts as they relate to certification requirements may be deducted during the entire period that MMIS certification is lacking. Should certification subsequently be granted retroactively, the State will reimburse the Contractor for amounts withheld back to the date of certification. The Contractor shall be reimbursed the amount of any recovery from a provider for an overpayment or duplicate payment up to the amount of the consequential damage assessed and collected.

The State may, at its sole discretion, return a portion or all of any liquidated damages collected as an incentive payment to the Contractor for prompt and lasting correction of performance deficiencies.

6.10 TERMINATION OF THE CONTRACT

The contract may be terminated by:

- o mutual written agreement of the State of Oklahoma and Contractor;
- o by the State of Oklahoma, in whole or in part, whenever OHCA determines that the Contractor has materially defaulted in performance of the Contract terms and shall fail to cure such default within a period of thirty (30) calendar days (or such longer periods as the State of Oklahoma may allow) after receipt of notice from the State of Oklahoma specifying the default;
- o by the State of Oklahoma, in whole or in part, whenever, for any reason, the State shall determine that such termination is in the best interest of the State of Oklahoma. The State of Oklahoma

shall provide the Contractor thirty (30) calendar days notice of such action;

- o by the State of Oklahoma, in whole or in part, whenever funding from State, Federal, or other sources is withdrawn, reduced, or limited, with sufficient prior notice to the Contractor; and
- o by the State of Oklahoma, in whole or in part, whenever the State of Oklahoma determines that the instability of the Contractor's financial condition threatens delivery of Medicaid services and continued performance of Contractor responsibilities.

All notices of termination, as defined in the sections below, shall be in writing and shall be forwarded by either certified or registered mail, return receipt requested. Each of the circumstances listed above is incorporated in the following Subsections.

6.10.1 TERMINATION FOR DEFAULT

The State may terminate this contract, in whole or in part, whenever OHCA determines that the Contractor or subcontractor has failed to satisfactorily perform its contracted duties and responsibilities and is unable to cure such failure within a reasonable period of time as specified in writing by the State, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default."

Upon determination by the State that the Contractor has failed to satisfactorily perform its contracted duties and responsibilities, the Contractor shall be notified in writing, by either certified or registered mail, of the failure and of the time period which has been established to cure such failure. If the Contractor is unable to cure the failure within thirty (30) calendar days after notification, the State will notify the Contractor that the contract, in full or in part, has been terminated for default.

If, after notice of termination for default, it is determined by the State or by a court of law that the Contractor was not in default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control of, and without error or negligence on the part of, the Contractor or any of its subcontractors, the notice of termination shall be deemed to have been issued as a termination for the convenience of the State, and the rights and obligations of the parties shall be governed accordingly.

In the event of termination for default, in full or in part as provided under this clause, the State may procure, upon such terms and in such manner as is deemed appropriate by the State, supplies or services similar to those terminated. Under these circumstances, the Contractor shall be liable for any costs for such similar supplies or services and all other damages allowed by law. In addition, the Contractor shall be liable to the State for administrative costs incurred to procure such similar supplies or services as are needed to continue operations.

In the event of a termination for default prior to the start of operations, the Contractor shall be paid in accordance with the procedures defined in ITB Subsection 6.10.6.

In the event of a termination for default during ongoing operations, the Contractor shall be paid for any outstanding invoices due less any assessed damages.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

6.10.2 TERMINATION FOR CONVENIENCE

The State may terminate performance of work under the contract, in whole or in part, whenever, for any reason, OHCA shall determine that such termination is the most appropriate action for the State of Oklahoma.

In the event that the State elects to terminate the contract pursuant to this provision, the Contractor shall be notified in writing by either certified or registered mail either thirty (30) calendar days prior to or such other reasonable period of time prior to the effective date, of the basis and extent of termination. Termination shall be effective as of the close of business on the date specified in the notice, and the Contractor shall comply with all appropriate provisions of the Turnover Task defined in ITB Subsection 3.9.

Upon receipt of notice of termination for convenience, the Contractor shall be paid in accordance with the procedures defined in ITB Subsection 6.10.6.

6.10.3 TERMINATION FOR UNAVAILABILITY FOR FUNDS

In the event funding from State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to the anticipated contract expiration date, the State may terminate the contract under the "Termination for Convenience" clause. The State's obligation to pay any amounts due for subsequent fiscal years is contingent upon annual legislative appropriation and approval of funds for that purpose. The Authority agrees to include in its annual budget request an amount equal to the payment due for the appropriate fiscal year during the contract term.

6.10.4 TERMINATION FOR FINANCIAL INSTABILITY

In the event that the Contractor becomes financially unstable to the point of threatening the ability of OHCA to obtain the services provided for under the contract, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, or suffers or permits the appointment of a receiver for its business or its assets, the State may, at its option, immediately terminate this contract effective the close of business on the date specified. In the event the State elects to terminate the contract under this provision, the Contractor shall be notified in writing by either certified or registered mail specifying the date of termination. In the event of the filing of a petition in bankruptcy by or against the Contractor or any subcontractor, the Contractor

shall immediately so advise OHCA. The Contractor shall ensure that all tasks related to the contract or any subcontract are performed in accordance with the terms of this contract.

6.10.5 PROCEDURES ON TERMINATION

Upon delivery by certified or registered mail to the Contractor of a Notice of Termination specifying the nature of the Termination and the date upon which such termination becomes effective, the Contractor shall:

- o stop work under the contract on the date and to the extent specified in the Notice;
- o assign to the State of Oklahoma in the manner and to the extent directed by the OHCA Re-procurement Manager or Contract Administrator all of the right, title and interest of the Contractor under the orders or subcontracts so terminated, in which case the State of Oklahoma shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- o with the approval of the OHCA Re-procurement Manager or Contract Administrator, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provision for the contract;
- o transfer title to the State of Oklahoma (to the extent that the title has not been transferred) and deliver all files, processing systems, data manuals and other documentation that relate to the work terminated by the Notice, as directed by the OHCA Re-procurement Manager or Contract Administrator;
- o complete the performance of such part of the work as shall not have been terminated by the Notice; and
- o take action as may be necessary for the protection and preservation of the property related to this contract which is in the possession or control of the Contractor, and in which the State of Oklahoma has or may acquire an interest.

6.10.6 TERMINATION CLAIMS

The OHCA Re-procurement Manager or Contract Administrator shall receive any termination claim from the Contractor in the form and with the certification prescribed by the OHCA Re-procurement Manager or Contract Administrator. Claims shall be submitted promptly and no later than one month from the effective date of termination, unless one or more extensions in writing are granted within such one (1) month period or authorized extension thereof.

Subject to the timeliness provisions in the previous paragraph, and subject to any review required by State procedures in effect as of the date of execution of the contract, the Contractor and OHCA may agree upon the amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to ITB Subsection 6.10.5. The contract shall be amended accordingly.

If this contract is terminated during any task, the Contractor shall be entitled to be paid an amount equal to the sum of direct labor, materials, and overhead costs incurred for work performed in connection with that task prior to receipt of Notice of Termination, but not more than the amount which would have been payable for the corresponding deliverables had they been submitted and approved prior to termination. The State will only pay for those services for which value has been received in progress on a product, regardless of Contractor costs. The Contractor shall not be entitled to be paid for any work performed in connection with tasks following the task in which notice of termination is received.

In the event of a failure to agree in whole or in part as to the amounts to be paid to the Contractor in connection with the total or partial termination of work pursuant to this article, the State shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined. The Contractor shall have the right of appeal, as stated under ITB Subsection 6.2.5, "DISPUTES," of any such determination.

However, if the State determines that the facts justify such action, termination claims may be accepted and acted upon at any time after such one (1) month period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Authority may, subject to any review required by the State procedures in effect as of the date of execution of the contract, determine on the basis of information available the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount so determined.

In no case shall the Contractor's termination claims including, but not limited to, those reasons set forth in Sections 6.10 through 6.10.6 herein, include any claim for unrealized anticipatory profits.

6.10.7 RIGHT TO SUSPEND OPERATIONS

If, at any time during the operations task of the contract, the State determines that it is in its best interest to temporarily suspend all claims processing or data processing operations, or any part thereof, the State may do so by providing the Contractor with a written notice to that effect. The Contractor shall, immediately upon receipt of such notice, cease all claims processing or data processing operations for the period specified in such notice.

6.10.8 GRATUITIES

It is a breach of ethical standards for a payment, gratuity, or offer of employment to be made by or on behalf of a subcontract or order. The State of Oklahoma may

terminate any contract if it is determined that gratuities of any kind were offered/received by any officials, employees or agents of the Contractor.

6.11 FINANCIAL REQUIREMENTS

The following Subsections address the financial requirements regarding the Oklahoma MMIS.

6.11.1 FINANCIAL ACCOUNTING REQUIREMENTS

The Contractor shall maintain accounting records relating directly to performance of this contract. These accounting records shall be maintained in accordance with generally accepted accounting principles. Further, they shall be maintained separate and apart from other corporate accounting records.

The Contractor shall maintain, document, and submit operations cost data in accordance with the State Medicaid Manual, Section 11276.10. Documentation shall support and differentiate between contract operations costs for MMIS and non-MMIS services provided by the Contractor that are not reimbursable at the seventy-five percent (75%) matching rate.

Authorized representatives or agents of the State and HCFA shall have access to the accounting records upon reasonable notice and at reasonable times during the performance and/or retention period of this contract for purposes of review, analysis, inspection, audit, and/or reproduction. Copies of any accounting records pertaining to the contract shall be made available by the Contractor within ten (10) calendar days of receiving a written request from the State for specified records. If such original documentation is not made available as requested, the Contractor agrees to provide transportation, lodging, and subsistence at no cost, for OHCA and other State and/or Federal representatives to carry out their audit function at the principal offices of the Contractor or other locations of such records. OHCA and other State and Federal agencies and their respective authorized representatives or agents shall have access to all accounting and financial records of any individual, partnership, firm, or corporation insofar as they relate to transactions with any Authority, board, commission, institution, or other State or Federal agency connected with this contract.

Financial records pertaining to this contract will be maintained for three (3) years following the end of the Federal fiscal year during which the contract is terminated or State and Federal audits of the contract have been completed, whichever is later. However, accounting records pertaining to the contract shall be retained until final resolution of all pending audit questions and for one (1) year following the termination of any litigation relating to the contract if the litigation has not terminated within the above three-year (3) period. Accounting records and procedures shall be subject to State and Federal approval.

6.11.2 FINANCIAL AUDIT REQUIREMENTS

The Contractor, in accordance with 45 CFR Part 74, shall maintain books, records, documents, and other evidence pertaining to the administrative costs and expenses of this contract to the extent and in such detail as shall properly reflect all revenues, all net costs, direct and apportioned, and other costs and expenses of whatever nature for which reimbursement is claimed under provisions of the contract.

The Contractor shall agree that authorized Federal and State representatives including, but not limited to, OHCA personnel, the State Auditor and other State and Federal agencies providing funds, and the Comptroller General of the United States, shall have access to and the right to examine the items listed above during the contract period and during the three-year (3) post-contract period or until final resolution of all pending audit questions and litigation. During the contract period, access to these items will be provided at the Contractor's office in Oklahoma at all reasonable times. During the three-year (3) post-contract period, delivery of and access to the listed items will be at no cost to the State.

The contractor shall agree that authorized Federal and State representatives, including, but not limited to, personnel of OHCA, other State entities with statutory authority, and independent auditors acting on behalf of the State and/or Federal agencies providing funds shall have access to, and the right to inspect, any site in which the contractor performs any work related to this Agreement or maintains any records related to this Agreement.

Records involving matters in litigation shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within the six (6) years.

The Contractor shall be responsible for financing a number of comprehensive independent audits periodically throughout the life of the contract with total costs not to exceed six hundred thousand dollars (\$600,000). The Authority shall select the independent auditor through issuance of an Invitation to Bid. All specifications of the audits, including the time each is conducted will be determined by the Authority. The MMIS Contractor will be responsible for all costs associated with the audits, including all charges of the selected independent auditor.

The provisions of this section shall be incorporated in any subcontract of one hundred thousand dollars (\$100,000.00) or more.

6.11.3 TAXES AND OTHER FUNDS DUE THE STATE

The Contractor shall certify under the pain or penalty of perjury that, as of the date the contract is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Oklahoma.

The Contractor shall understand that final payment under this contract may be withheld if the State of Oklahoma determines that the Contractor is not in good standing

with respect to or in full compliance with a plan to pay any and all taxes due the State of Oklahoma.

The Contractor shall also understand the State of Oklahoma may set off any liquidated sums which the Contractor owes the State of Oklahoma against any sums due the Contractor under this contract. Taxes (and related penalties, interest and fees) due to the State of Oklahoma may be included, but only if the Contractor has failed to take an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal recourse to contest the amounts due.

6.12 OWNERSHIP

The following Subsections address the ownership of the system, data files, and other aspects of the Oklahoma MMIS.

6.12.1 OWNERSHIP OF THE SYSTEM

The Contractor agrees that the State of Oklahoma and the United States Department of Health and Human Services (DHHS) shall have a non-exclusive, royalty-free, and irrevocable license to reproduce or otherwise use and authorize others to use the software, procedures, files, and other documentation constituting the Oklahoma MMIS at any time during the period of the contract and thereafter. The Contractor agrees to deliver such material to the State within thirty (30) calendar days from receipt of the request by OHCA. Such requests may be made by OHCA at any time prior to the expiration of the contract.

The license shall include, but is not limited to:

- o all Oklahoma MMIS and supporting programs in their most current version;
- o all job control language (JCL) or other system instructions for operating the Oklahoma MMIS, in their most current version;
- o all data files in their most current version;
- o user and operational manuals and other documentation in their most current version;
- o system and program documentation describing the most current version of the Oklahoma MMIS, including the most current versions of source and object code;
- o training programs for OHCA staff and other designated State employees for the operation and use of the system;
- o any and all performance-enhancing operational plans and products;
- o training programs for providers and other billing agents for claims submission (both paper and EMC) and use of the

Eligibility Verification and Provider Inquiry System and PRO-DUR/ECM; and

- o all specialized or specially modified operating system software and specially developed programs, including utilities, software, electronic claims submission packages, and documentation, which are required for, or used in the operation of, the Oklahoma MMIS but which may not be considered as being developed or modified under this contract.

Proprietary software proposed for use within a functional area of the planned Oklahoma MMIS may be exempt from this ownership clause. Exemptions would be granted if the proprietary product is defined as such and with sufficient specificity in the bidder's proposal that the State can determine whether to fully accept it as the desired solution during proposal evaluation. The Contractor shall be required to provide sufficient information regarding the objectives and specifications of any proprietary software to allow its functions to be duplicated by other commercial or public domain products.

Any other specialized software that is not covered under a public domain license that will be integrated into the Oklahoma MMIS shall be identified as to its commercial source.

Proprietary software solutions will not be allowed as part of the ongoing development of MMIS features, and all system modifications made after start of operations will be funded jointly by State and Federal financial participation.

A fundamental obligation imposed on the Contractor is for the transfer by the Contractor to the State of ownership rights in the Oklahoma MMIS, whether developed or obtained by the Contractor in the course of performance under the contract or before it. This obligation to transfer ownership rights on the part of the Contractor is subject to the limitations described above.

The exception to this requirement on ownership rights is for the use of commercial software which requires that such software be available to the State on the open market and not have been modified in any manner. It is the responsibility of the Contractor to demonstrate that the software is available through other sources.

Title to the system shall be transferred to the State, including portions (for example, documentation) as they are created during the Development and Implementation Task and subsequently as modifications for future changes to the MMIS are approved and installed.

The Contractor will convey, upon request and without limitation, copies of all system documentation, operating instructions, and procedures and all data processing programs, or portions thereof, which are part of the planned Oklahoma MMIS, whether

they are developed by the employees of the Contractor or any subcontractor as part of this contract or transferred from another MMIS or contract.

The provisions of this clause shall be incorporated in any subcontract which relates to the development, operation, or maintenance of any component part of the Oklahoma MMIS.

6.12.2 OWNERSHIP OF DATA AND SOFTWARE

All data acquired by the Contractor from the Authority or from third parties at the expense of the Authority in the performance of this Agreement during the MMIS Development and Implementation or Operations Tasks, whether or not it is personal data, shall be and remain the property of the State. The Authority, for itself and such other agencies of the State or of other states or of the federal government, will have unrestricted ownership rights to all software and related documentation prepared, acquired, designed, developed or improved by the Contractor for delivery to the Authority under this Agreement.

Unrestricted ownership rights under this Agreement includes the right to use, disclose or duplicate all such software and related documentation in whole or in part in any manner and for any purpose without compensation to or approval by the Contractor. Software and related documentation includes all finished or unfinished studies, analyses, flow charts, design documents, program specifications, programs, magnetic tapes, source codes and listings, source and object decks, test data, test results, schedules and planning documents, training materials and user manuals, forms, reports and similar documents, including modifications thereto. All software and related documentation prepared or acquired by the Contractor for the Authority under this Agreement shall carry the following standard heading on the front cover, title page or, in the case of programs, in the title block:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

The Contractor will use Authority-owned data, software and related documentation, before and after the expiration or termination of this Agreement, only as required for the performance of this Agreement (see also ITB Subsection 6.12.4, "CONFIDENTIALITY OF INFORMATION"). It will not otherwise use, copy or reproduce the same in any form, except pursuant to the express written instructions of the Authority or the HCFA.

The Contractor further agrees to deliver the same to the Authority promptly upon request, or upon expiration or termination of this Agreement, in whatever form it is maintained by the Contractor, and to destroy all copies remaining in its possession, including machine-readable copies. The Contractor will take all reasonable steps during the MMIS Development and Implementation, Operations, and Maintenance and Modifications Tasks to assure the physical security of Authority-owned data, software and related documentation in its possession including, but not limited to, protection

against damage from fire, smoke and water, and security measures enumerated in ITB Subsection 6.12.4, "CONFIDENTIALITY OF INFORMATION."

6.12.3 OWNERSHIP OF INFORMATION

The State shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by the Contractor under this contract.

6.12.4 CONFIDENTIALITY OF INFORMATION

The Contractor shall treat all information, and in particular information relating to recipients and providers, which is obtained by it through its performance under the contract as confidential information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and to secure its rights hereunder.

All information as to personal facts and circumstances concerning recipients obtained by the Contractor shall be treated as privileged communications, shall be held confidential, and shall also include the Authority's written consent regarding the disclosure of any information in summary, statistical, or other form which does not identify particular individuals.

The use or disclosure of information concerning recipients will be limited to purposes directly connected with the administration of the contract.

All contractor and subcontractor employees shall be instructed in writing of this requirement and shall be required to sign a document to this effect upon employment and annually thereafter.

6.12.5 INSPECTION OF WORK PERFORMED

The Authority or any authorized representative of the State of Oklahoma, the U.S. Department of Health and Human Services, the U.S. Comptroller General, the U.S. General Accounting Office, or their authorized representatives shall, at all reasonable times, have the right to enter the Contractor's premises or such other places where duties under this contract are being performed to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor and all subcontractors must provide reasonable access to all facilities and assistance to the State and Federal representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

6.12.6 RECORDS RETENTION REQUIREMENTS

The Contractor shall maintain records of all claims received, transactions processed, and adjudication decisions made by the system. These records must include all financial and programmatic records, supporting documents, statistics, and other records of recipients for a period of five (5) years from the last date of decision, in

accordance with 45 CFR 74.164. Microform copies of such records that meet the standards in 42 CFR 431.17 may be substituted for original records. Either original claims or micromedia copies must be retained for at least six (6) years from the date of expiration or termination of the Agreement. Storage shall be in the State of Oklahoma throughout this period.

6.12.7 USE AND DELIVERY OF FILES

Upon the written request of the MMIS Re-procurement Manager or Contract Administrator during the MMIS Development and Implementation or Operation Tasks, the Contractor shall deliver to the Authority copies of any data or program file(s) in the MMIS. Each request shall identify the files and the version, sequence, media and number of copies desired. The Contractor shall fulfill each request within three (3) business days of its receipt. The Contractor shall receive no additional compensation for production and delivery of such files.

6.12.8 BACKUP PROCEDURES

The Contractor shall keep in a separate and safe place additional copies of all MMIS records and Authority data required to be maintained or additional tapes or disks necessary to reproduce all such records and Authority data. The Contractor shall use reasonable care (minimally meeting applicable IRS standards) to minimize the likelihood of all damage, loss of data, delays, and errors resulting from an uncontrollable event, and should such damage, loss of data, delays, and errors occur the Contractor shall use its best efforts to mitigate the effects of such occurrence. At the MMIS Re-procurement Manager's or Contract Administrator's request, the Contractor shall deliver to the Authority a monthly backup tape of all the Authority's data at the Contractor's expense. In the event of loss of data by the Contractor, the Contractor shall regenerate the lost data at the Contractor's expense.

6.12.9 STATE EQUIPMENT ON CONTRACTOR PROPERTY

The Contractor must supply all equipment at their site(s) that is necessary to fulfill the requirements of this contract. Should the State of Oklahoma decide to place any equipment, owned or leased by the State of Oklahoma, on contractor, owned or leased property, the equipment will remain the property of the State of Oklahoma.

6.13 OTHER CONTRACT TERMS AND CONDITIONS

The following Subsections address term and conditions not otherwise covered in the preceding Subsections of this Agreement.

6.13.1 ENVIRONMENTAL PROTECTION

The Contractor shall be in compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the EPA List of Violating

Facilities. The Contractor shall report violations to the applicable grantor Federal agency and the U.S. EPA Assistant Administrator for Enforcement.

6.13.2 PUBLICITY

The Contractor shall at all times obtain the prior written approval from the OHCA Re-procurement Manager or Contract Administrator before it, any of its officers, agents, employees or subcontractors either during or after expiration or termination of the Agreement make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this Agreement.

If the Contractor or any of its subcontractors publishes a work dealing with any aspect of performance under the Agreement, or of the results and accomplishments attained in such performance, the State shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

6.13.3 AWARD OF RELATED CONTRACTS

The State may undertake or award supplemental or successor contracts for work related to this contract or any portion thereof. The Contractor shall be bound to cooperate fully with such other Contractors and the State in all such cases. All subcontractors will be required to abide by this provision as a condition of the contract between the subcontractor and the prime Contractor.

6.13.4 CONFLICT OF INTEREST

No official or employee of OHCA and no other public official of the State of Oklahoma or the Federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract.

The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performance of the contract, no person having any such known interests shall be employed.

6.13.5 FINANCIAL RECORDS SUPPLIED TO THE AUTHORITY

During the entire life of the Agreement, the Contractor and all subcontractors shall provide the Authority with copies of its annual report and all disclosure or reporting statements or forms filed with the State of Oklahoma and/or the Securities and Exchange Commission (SEC) as soon as they are prepared in final form and are otherwise available for distribution or filing. In the event that the Contractor is not required to or does not prepare either an annual report or SEC disclosure or reporting statements or forms by virtue of being a subsidiary of another corporation, it shall fulfill the requirements of this

Section with respect to all such documents for any parent corporation which reflect, report or include any of its operations on any basis.

Upon the written request of the OHCA Contract Administrator, the Contractor and all subcontractors shall furnish the Authority with the most recent unaudited and audited copies of its current balance sheet within fourteen (14) calendar days of its receipt of such request.

6.13.6 TAX EXEMPT STATUS

The Authority represents that it is exempt from federal excise, state and local taxes, and that sales to it are exempted from Oklahoma sales and use taxes. If in the future the Authority becomes subject to any such taxes, the Authority shall reimburse the Contractor for any cost or expense incurred. Any other taxes imposed on the Contractor on account of this Agreement shall be borne solely by the Contractor.

6.13.7 FREEDOM OF INFORMATION

Due regard will be given for the protection of propriety information contained in all proposals received; however, bidders should be aware that all materials associated with the procurement are subject to the terms of the Freedom of Information Act, the Privacy Act and all rules, regulations and interpretations resulting therefrom. It will not be sufficient for Bidders to merely state generally that the proposal is proprietary in nature and not therefore subject to release to third parties. Those particular pages of section which a Bidder believes to be proprietary must be specifically identified as such. Exemptions for proprietary reasons shall be considered within the constraints of Oklahoma statute. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the bidder that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the above cited statute. Between the bidder and the Authority the final administrative authority to release or exempt any or all material so identified rests with the Authority.

6.13.8 PROVIDER RELATIONS

In no way shall the Contractor represent itself directly or by inference as a representative of the Oklahoma medical assistance program, except within the confines of its role as MMIS Contractor.

State approval must be received in all instances in which the Contractor distributes publications to the provider community.

6.13.9 TITLES NOT CONTROLLING

Titles of paragraphs used herein are for the purpose of facilitating ease of reference only and shall not be construed to infer a contractual construction of language.

6.13.10 UNLAWFUL BOYCOTT

The contractor warrants, represents and agrees that during the time this contract is in affect, neither it nor any affiliated company will participate in or cooperate with an international boycott, as defined in the 28 USC Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended.

6.13.11 PERFORMANCE SUBJECT TO LAW

The contractor agrees to perform all services under this Agreement in accordance with all applicable Federal and State laws and regulations in effect at the time of performance, and this Agreement shall be subject to all such laws and regulations. However, any reference in this Agreement to Title XIX of the Social Security Act does not empower the contractor to approve for payment any service to, or perform any function or services not authorized under, this Agreement.

6.13.12 AWARD OF RELATED CONTRACTS

OHCA may undertake or award supplemental contracts for work related to the Oklahoma MMIS or any portion thereof. The contractor shall be bound to cooperate fully with such other contractors and OHCA in all such cases. All subcontractors shall be required to abide by this provision as a condition of the Contract between the subcontractor and prime contractor.

6.13.13 CHOICE OF LAW AND VENUE

The contractor agrees to be bound by the laws of the State of Oklahoma and to bring any legal proceedings arising under the Agreement to the Oklahoma City Circuit Court. For the purpose of Federal jurisdiction, in any action in which the State of Oklahoma is a party, venue shall be in the United States Western District Court for the State of Oklahoma.

6.13.14 PERFORMANCE BOND

The contractor shall be required to furnish a performance bond in the amount of three million dollars (\$3,000,000.00) within ten (10) calendar days of the effective date of the Agreement to guarantee performance in accordance with the conditions and specifications of this ITB and the Agreement. A certified check, cashier's check, or certificate of deposit would be acceptable in lieu of a performance bond.

Prior to acceptance of the performance bond, the State reserves the right to review the bond and may require the contractor to substitute a more acceptable bond in such form as may be required.

Failure to provide a performance bond within the required time shall be cause for the cancellation or termination of the Agreement.

In the event of termination for default, the performance bond shall become payable to the State for any outstanding damage assessments against the contractor. Up to the full amount of the performance bond may also be applied to the contractor's

liability for any administrative costs and/or excess costs incurred by OHCA in obtaining similar equipment or services to replace those terminated as a result of the default. OHCA may seek other remedies under law in addition to this stated liability.

The performance bond shall also become payable to the State if the Contract is terminated due to bankruptcy on the part of the contractor, whether voluntary or involuntary.

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